D Submitted 1-21 Judge Davis
Oct 15

Affirmed
Clifford
Swayne

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~237.~~ 27

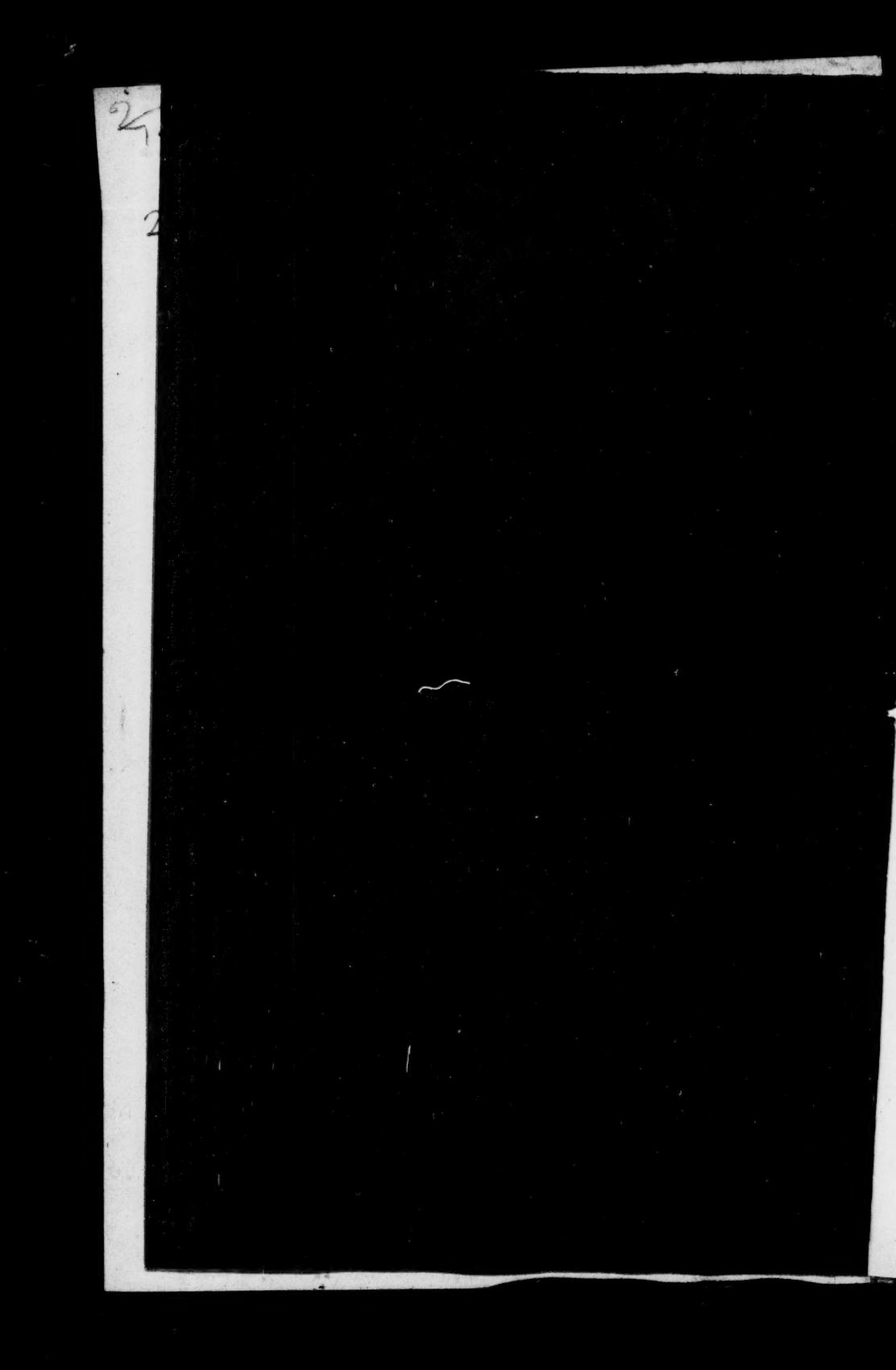
THOMAS J. SEMMES, CLAIMANT OF SIX LOTS OF GROUND,
PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 13, 1873.



SUPREME COURT OF THE UNITED STATES.

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1 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

THE UNITED STATES, PLAINTIFFS IN ERROR,
vs.
SIX LOTS OF GROUND, THE PROPERTY OF Thomas J. Semmes, defendant in error.
No. 5669.

TRANSCRIPT FROM THE UNITED STATES DISTRICT COURT.—FILED OCTOBER 10, 1868.

THE UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF Thomas J. Semmes.

Libel.—Filed August 7th, 1863.

To the honorable Edward H. Durell, judge of the district court of the United States, for the eastern district of Louisiana:

The libel of information of Rufus Waples, attorney of the
2 United States of America, for the eastern district of Louisiana, who prosecutes for the said United States in this behalf, and being here present in court, in his own proper person, in the name and behalf of the said United States of America, against the "estate, property, money, stocks, credits and effects," hereinafter described, and against all persons intervening for their interest therein, in a case of seizure and forfeiture, alleges, propounds, and declares as follows:

1. That James Graham, esq., marshal of the United States for the said district, under written authority given *by* him by the said attorney, in compliance with instructions issued by the Attorney-General of the U. S. to the dis't attorneys thereof, & by virtue of the act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled, "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes;" heretofore, that is to say, on the twenty-first day of July, in the year of our Lord one
3 thousand eight hundred and sixty-three, seized as forfeited to the United States, at New Orleans, within said district and within the jurisdiction of this court, a certain lot of ground situate in the first district, in the square bounded by Annunciation, St. Thomas, Edwards, & Benjamin streets, and designated by the number 14, on a plan drawn by B. F. Nichols, architect, and measuring 22 feet 10 inches 3 lines front, on Edward s't, by 17 feet in width at the rear; 121 feet 7 inches & 3 lines in depth on division line of lot No. 13, & 120 feet 11 inches & 7 lines on the lines dividing it from lot No. 15.

A certain piece or portion of ground situate in the 1st district of said city, in the square bounded by St. Thomas, Annunciation, Edwards, & Benjamin streets, said portion of ground measuring 12 feet front on Annunciation s't, by 110 feet deep between parallel lines, which portion of ground makes part of lot No. 18 as per plan of B. F. Nichols,
4 architect, & which portion of ground is bounded on one side by lot No. 17, on said plan, and on the other side by the remaining

portion of lot No. 18, together with all the improvements thereon, rights, privileges, &c.

Three certain lots of ground, with the buildings and improvements thereon, situate in the first district, in the square bounded by St. Thomas, Annunciation, Edward, & Benjamin streets, designated as lots Nos. 14, 16, & 17, on plan by B. F. Nichols, dated 31 May, 1853. No. 14 measures 22 feet 10 inches & 3 lines front, on Edward s't, 17 feet in width on the rear, 121 feet 7 inches 3 lines deep, on the line dividing it from lot No. 13, & 120 feet 11 inches on the line dividing it from lot No. 15. Lots Nos. 16 & 17 measure each 24 feet front on Annunciation street, by 110 feet deep between parallel lines, lot No. 16, forming the corner of Edward & Annunciation streets.

5 A certain lot of ground situate in the first district of the city of New Orleans, in the square bounded by Edward, Estelle, Camp, & Magazine streets, being the rear portion of the lot designated No. 1, on a plan by A. D. Hunecourt, surveyor, dated 9th November, 1847. Said portion of ground, hereby sold, measures 27 feet 10 inches 5 lines on Edward street, by a depth of 31 feet 11 inches 5 lines between parallel lines, English measure.

2nd. That the person who owns the said property, Tho's J. Semmes, whose domicile is in this city, is, & was on the 17 day of July, 1862, & previously thereto had been, the owner thereof.

3rd. That certain States, forming a part of the territory and constituting a part of the United States of America, and specifically enumerated by the President of the United States in his proclamation, duly issued, and bearing date the first day of July, A. D. eighteen

6 hundred and sixty-two, are now engaged, and were, at the time said proclamation was issued, engaged, and have since continued to be engaged, in armed rebellion against the lawful authority of the United States.

4th. That by the act of Congress of the United States, approved the 17th day of July, in the year of our Lord 1862, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," provision was made for the seizure and confiscation of the property of persons engaged in armed rebellion against the lawful authority of the United States, and of other persons, as therein set forth.

5th. That the said Tho's J. Semmes, the person who owns the property herein seized, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as a member of Congress of the so-called Confederate States of

7 America; that while owning property in a loyal State or Territory of the United States, or of the District of Columbia, he did give aid and comfort to the rebellion against the United States, and did assist such rebellion.

6th. That the said T. J. Semmes, the person who owns the said property, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, did act as governor of a State, or a member of a convention or legislature, or as judge of a court of one of the so-called Confederate States of America, to wit, the State of Louisiana; or did hold an office in the so-called Confederate States of America after having held an office of trust or profit in the United States; or did hold an office or agency under the government of the so-called Confederate States of America or under one of the States thereof, said office being national, State, or municipal in its name and character, which said office or agency he accepted

8 after the date of the pretended ordinance of secession of the State of Louisiana; that he did take an oath of allegiance to or to support the constitution of the so-called Confederate States.

7th. That the said Tho's J. Semmes, person who owns the said property, subsequently to the said seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation, duly given and made by the President of the United States, on the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and sixty-two, cease to aid, countenance, and abet such rebellion, and return to his allegiance to the United States.

8th. That the said Tho's J. Semmes, person who owns said
9 property, subsequently to the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, within a State or Territory of the United States, was engaged in aiding and abetting an armed rebellion against the Government of the United States, and did not, within sixty days after public warning and proclamation, duly given and made, on the twenty-fifth day of July, in the year one thousand eight hundred and sixty-two, by the President of the United States, cease to aid, countenance, and abet such rebellion, nda return to his allegiance to the United States.

9th That by reason of the premises, the property herein described, and all the right, title, interest, and estate of the said person or persons whose property is described herein, became and was forfeited to the United States, and ought to be condemned to their use.

Wherefore the said attorney, in the name and behalf of the
10 United States of America, prays that process may issue against the said property, and the owner and owners thereof, and against all persons interested or claiming an interest therein, warning them at some early day, to be named therein, to appear and answer this libel of information, & that an order of publication may be made in the usual form, & that the court may grant such further & other relief as to law & justice may appertain & as the court is competent to give in the premises, & that after due proceedings had the said property may be condemned as forfeited to the United States of America. And he prays for general relief.

(Signed) RUFUS WAPLES,
U. S. Att'y for the E. Dis't of La.

Order of publication.—Issued August 8th, 1863.

United States district court, E. D. of Louisiana.

UNITED STATES
vs.
11 SIX LOTS OF GROUND, THE PROPERTY of T. J. Semmes. } No. 7643.

Whereas, six certain lots of ground situated in 1st district, and fully described in the libel of the district attorney now on file in this court, together with all the improvements, buildings, rights, privileges, appurtenances, and other heriditaments to the same belonging or in any wise appertaining, and all the right, title, and interest of said Thomas J. Semmes therein, has been seized by the marshal of the United States

for the eastern district of Louisiana, by virtue of an act of Congress, approved on the seventeenth day of July, in the year of our Lord one thousand eight hundred and sixty-two, entitled "An act to suppress insurrection, to punish treason and rebellion, to seize and confiscate the property of rebels, and for other purposes," and, whereas, the United States attorney for the eastern district of Louisiana did, on the seventh day of August, A. D. 1863, file a libel of information in this court,
12 praying the condemnation of said property and real estate, under the act aforesaid, and that process of monition issue against the owner or owners of said property and real estate, and all persons interested or claiming an interest therein, warning them at some early day to appear and answer said information.

It is therefore, on this 8th day of August, in the year of our Lord one thousand eight hundred and sixty-three, ordered that notice be given to the owner and owners of said property and real estate, and all persons interested or claiming an interest therein, to appear and answer this information on the 31 day of August, 1863, and show cause, if any they have, why said property and real estate, and the right, title, and interest therein of the said Thomas J. Semmes should not be condemned and sold according to law; and that notice be given by posting a copy of this order upon the front door of the court house of the district
13 and by publication in the Era newspaper twice a week previous to said 31st day of August, 1863, the first publication to be on or before 11th instant.

(Signed) E. H. DURELL, *Judge.*

NEW ORLEANS, *Aug. 8th*, 1863.

Warrant.

The President of the United States of America to the marshal of the eastern district of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded forthwith to seize, and into your possession take, the real estate, a full description whereof is hereto annexed, as part of this writ, together with all the improvements, buildings, privileges, and other hereditaments to the same belonging, and all the right, title, & interest of Tho's J. Semmes therein, now libelled by the United States for the causes set forth in the libel now pending in district court of United States for the district of Louisiana, that you do cite and admonish the owner or owners, and all and every other person or persons, having or pretending to have, any right, title, or in-
14 terest in or to the same, to be and appear before a district court of the United States for the district aforesaid, to be holden at the city of New Orleans, on or before the third Monday from the service hereof, to show cause, if any they have or can, why the said real estate, &c., should not be condemned and sold agreeably to the prayer of libellant, and how you have executed this warrant, that you make return according to law.

Witness the honorable Edward H. Durell, judge of the said court, at New Orleans, this 8th day of August, 1863, and the 88th year of the Independence of the United States.

(Signed) ALFRED SHAW, *Clerk.*
By K. LOEW, *Dy Clerk.*

Marshal's return.

Received August 8th, 1863, & in obedience to the within warrant seized and took into my possession the within described property,
15 posted copies of the libel of information, this warrant, & the order of the judge on the door of the court-house, and published monition in the Era, a daily newspaper printed and published in New Orleans, on the 11, 15, 19, 22, 25, 29 August, 1863. Returnable 31 August, 1863.

(Signed) JAMES GRAHAM,
U. S. Marshal.

The description of property annexed to this writ is already copied in the libel of information.

Monition.

UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF TH'S J. Semmes. } No. 7643.

In the United States district court, eastern district of Louisiana.

In obedience to a warrant issued in this court to me directed, in the entitled suit, I have seized and taken into my possession—

A certain lot of ground situate in the First district, in the square bounded by Annunciation, St. Thomas, Edward, & Benjamin
16 streets, and designated by the No. 14, on a plan drawn by B. F. Nichols, architect, & measuring 22 feet 10 in. 3 lines front on Edward street, by 17 feet in width at the rear, 121 feet 7 in. 3 lines in depth on the division line of lot No. 13, & 120 feet 11 in. 7 lines on the line dividing it from lot No. 15.

A certain piece or portion of ground situate in the 1st district of said city in the square bounded by St. Thomas, Annunication, Edward, and Benjamin streets, said portion of ground measures 12 feet front on Annunciation street by 110 feet deep between parallel lines, which portion of ground makes part of lot No. 18, as per plan B. F. Nichols, architect, and which portion of ground is bounded on one side by lot No. 17 on said plan, on the other side by the remaining portion of lot No. 18.

Three certain lots of ground situate in the 1st district in square bounded by St. Thomas, Annunciation, Edwards, & Benjamin
17 streets, designated by the Nos. 14, 16, & 17 on plan, by B. F. Nichols, dated 31 May, 1853. No. 14 measures 22 feet 10 inches 3 lines front on Edward street, 17 feet in width at the rear, 121 feet 7 inches 3 lines deep on the line dividing it from lot No. 15. Lots Nos. 16 & 17 measure each 24 feet front on Annunciation street by 110 feet deep between parallel lines. Lot No. 16 forms the corner of Edward and Annunciation streets.

A certain lot of ground situate in the 1st district of the city of New Orleans, on the square bounded by Edward, Estelle, Camp, & Magazine st's, being the rear portion of the lot designated No. 1, on a plan by A. S. Hunecourt, surveyor, dated 9th November, 1847; said portion of ground measures 27 feet 10 inches 5 lines front on Edward street, by a depth of 31 feet 11 inches 5 lines, between parallel lines, English measure, together with all the improvements, buildings, rights, privileges, appurtenances & other hereditaments to the same belonging, or in any

wise appertaining, and all the right, title, & interest of the said
18 Thomas J. Semmes therein, now libelled by the U. S. for the reasons assigned and set forth in the libel in the above suit now pending in the said district court.

And I do hereby cite & admonish the owner or owners thereof, and all persons having or pretending to have any right, title, or interest in or to the same, to be & appear at a district court of the United States for the district aforesaid, to be holden in the city of New Orleans, on or before the 3rd Monday from the date hereof, to show cause, if any they have or can, why the said above-described property should not be condemned & forfeited to the United States agreeably to the prayer of libellant.

U. S. Marshal's Office, New Orleans, 11th August, 1863.

(Signed) JAMES GRAHAM,
U. S. Marshal.

19 *Intervention of Merchants' Mutual Ins. Company.—Filed August 31st, 1863.*

To the hon. the judge of the United States district court for the eastern district of Louisiana:

The petition of intervention of the Merchants' Mutual Insurance Company, residing in New Orleans, in this judicial district of Louisiana, respectfully shows that they are creditors of Tho's J. Semmes, formerly residing in New Orleans, for the sum of forty-five hundred dollars, being balance of note for $6,000, dated 5 March, 1860, with interest at 8 % from date until paid, payable 12 months after date to himself, & endorsed.

That said note was secured by mortgage to petitioners by act before J. W. Breedlove, notary public, dated 5 March, 1860, of the following property:

A portion of ground situate in the 1st district in square bounded
20 by Annunciation, S't Thomas, Edwards, & Benjamin streets, having 60 feet front on Annunciation st., by 156 feet 2 inches front on Edward street, and forms the whole of lots No. 16 & 17, & parts of number 18 fronting on Annunciation street, and parts of lots No. 14 & 15, fronting on Edward street, as per plan drawn by B. F. Nichols, architect, 31 May, 1853, as will more fully appear by the annexed certificate, as also the note annexed. The copy of the act cannot be obtained at present, there not being a custodian of the acts of said Breedlove, who has left the State.

Your petitioners show that these lots belonging to said Semmes have been seized by the U. S. by process from this hon. court, & are prayed to be decreed as forfeited to said States for misconduct & treasonable acts & doings of the said Semmes.

Your petitioners respectfully show that the conduct of the said
21 Semmes cannot in any manner affect their rights as mortgage-creditors, and that under the circumstances your petitioners have right of preference over these described lots, and the proceeds thereof to the said United States.

They therefore pray that, in case sale may be ordered of said property they may be paid their debt, with all interest and costs, or if the said property should be adjudge' to be confiscated as to the said Semmes, yet that as to your petitioners, the said confiscation shall be adjudged to be subordinate and subject to the claims of your petitioners, and that the said property be ordered on behalf of your petitioners to be sold to

satisfy their demand of $4,500, with interest at 8 % from 5th March, 1863, and costs of suit.

(Signed) L. PIERCE.

Cha's Lagory, being duly sworn deposes and says, that he is the president of the insurance company, the petitioners, & that the facts as are above alleged are all true and correct.

22 (Signed) CH'S SAGORY, *Pres't.*

Sworn to & subscribed before me, this 22d Aug., 1863.

(Signed) A. MEUNIER, *2d J. P.*

Note filed with intervention.

$6000.] NEW ORLEANS, *March* 5, 1860.

One year after date I promise to pay to the order of myself the sum of six thousand dollars, value received, with interest at the rate of eight per cent. per annum from date, until final payment.

(Signed) THO'S J. SEMMES.

(Endorsed:) Pay to order of the Merchants' Mutual Insurance Company.

(Signed) TH'S J. SEMMES.

NEW ORLEANS, *Feb'ry* 26, 1862.

Received twenty-three hundred and forty dollars on account of this note, leaving a balance due on 8th March, 1863, of forty-five hundred dollars.

(Signed) P. FOURCHY.

N. O., *March, 5th,* 1861.

23 In consideration of five hundred and eighteen $\frac{40}{100}$ dollars, one year's interest on this note, the payment thereof is hereby extended to 5-8th March, 1862.

(Signed) JOHN PEMBERTON.

Mortgage certificate filed with intervention.

MORTGAGE OFFICE.

By act before J. W. Breedlove, notary, on 5th March, 1860, Thomas J. Semmes mortgaged in favor of the Merchants' Mutual Insurance Company, represented by Jno. Pemberton, its president, a portion of ground situate in the 1st district, in square bounded by Annunciation, St. Thomas, Edward, and Benjamin streets, and has 60 feet front on Annunciation street by 156 feet 2 inches front on Edward street, & forms the whole of lots Nos. 16 & 17 & part of No. 18, fronting on Annunciation street, and part of lots Nos. 14 and 15 fronting on Edward
24 street as per plan drawn by B. F. Nichols, architect, on 31 May, 1853, (subject to mortgage B. 72, fo. 47,) to secure payment of a promissory note for $6000, dated 5th March, 1860, drawn and endorsed by said Semmes, and payable one year after date with mutual interest at 8 % per annum, costs, fees, &c., which note was paraphed by said notary.

New Orleans, March 5th, 1860.

(Signed) C. DARCANTEL,
D'y Recorder.

I certify the above to be a true copy of an inscription recorded in B. M. 74, fo. 658, in my office.
New Orleans, Aug. 26, 1863.

J. W. MADDEN,
D'y Recorder of Mortgages.

25 *Default.—Sept'r* 8, 1863.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7643.

The delay allowed by law having expired, and no claim or defence having been filed, after due monition & proclamation, on motion of the district att'y, it is ordered that all persons interested in the property seized, be pronounced in contumacy and default, and the libel adjudged and taken pro confesso.—*Extract from the minutes.*

Exception of dist. att'y.—Filed Nov. 6, 1863.

UNITED STATES
vs.
MERCHANTS MUTUAL INSURANCE COMPANY, intervenors in 6 lots of ground, property of T. J. Semmes. } No. 7643.

To the hon. E. H. Durell, judge of the United States district
26 court for the eastern district of Louisiana.

This libellant, Rufus Waples, attorney of the United States of America for the eastern district of Louisiana, who herein prosecutes for the United States in this behalf, by protestation and not confessing or acknowledging all or any of the matters and things in the said intervenor's bill to be true in such manner and form as the same are therein set forth and alleged, doth, for exceptions to said bill of intervention, allege and show that said bill of intervention is informal and insufficient, as follows:

1ST EXCEPTION.—For that said bill and petition of intervention shows that said claimants are residents of the State of L'a, which said State is in rebellion and open resistance to the Government of the
27 U. S., and fails to disclose to this district attorney as aforesaid, in behalf as aforesaid, who are the persons constituting the firm of the Merchants' Mutual Insurance Company.

2D EXCEPTION.—For that said bill and petition of said intervenors shows no special lien on or interest in the specific property libelled in this cause.

3RD EXCEPTION.—For that said intervenors, by the said petition of intervention, do not bring themselves within the act of Congress of the United States, entitled "An act to protect the liens upon vessels in certain causes, and for other purposes," approved March 3d, 1863, and made a part of this exception.

4TH EXCEPTION.—For that said intervenors have not given a stipulation with sureties to abide by the final decree in this cause to be rendered.

Wherefore, said Rufus Waples, attorney as aforesaid, who pros-

28 ecutes as aforesaid, humbly demands w'ether he shall be compelled to make any further answer to said bill of intervention, or any of the matters and things therein contained, and prays that said bill of intervention be dismissed with costs.

(Signed) RUFUS WAPLES,
U. S. Att'y for the E. D. of La.

Answer of same.

UNITED STATES
ads.
MERCH'TS MUT'L INS. CO., INTERVENORS IN 6 lots of ground, property of T. J. Semmes. } No. 7643.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of America for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said bill of inter-
29 vention exhibited by the Merchants' Mutual Insurance Company in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said bill of intervention of said Merchants' Mutual Insurance Company for answer thereto, or unto so much and such parts thereof as he is advised is or are material or necessary for him to make answer unto, answering, saith:

That this defendant Attorney as aforesaid, in behalf as aforesaid, expressly denies that the said intervenors, the Merchants' Mutual Insurance Co., who constitu'e said firm, are loyal citizens of the United States.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States, approved March 3d, 1863, and entitled, "An act to protect the liens upon vessels in certain cases, and for other purposes," that in all cases now
30 or hereafter pending, wherein any ship, vessel, or other property shall be condemned in any proceeding by virtue of the acts abovementioned, or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such ship, vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property, under the laws of the United States, or of any loyal State thereof:

Provided, that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of
31 such ship, vessel, or other property; and provided, also, that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property in any loyal State wherein such claim arose, the said intervenors, Merchants' Mutual Insurance Co., are not entitled to any relief in this honorable court against the said property seized under said libel; and this defend-

ant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statute in this cause.

And this defendant, as attorney aforesaid, in behalf as aforesaid, denies that said Th's J. Semmes, is indebted to said Merchants' Mutual Ins. Company in the manner and form as stated in said bill of intervention.

Without this, that there is any other matter, cause, or thing in the said intervenor's bill contained, material or necessary for this defendant, attorney as aforesaid, to make answer unto, and not herein and
32 hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant, attorney as aforesaid.

All of which matters and things this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed with costs and charges in this behalf wrongfully sustained.

And, as in duty bound, will ever pray, &c.

(Signed) RUFUS WAPLES,
U. S. Att'y E. D. of La.

Taxation of fee U. S. att'y.

Order taxing fee of U. S. att'y, June 28th, 1864.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

33 Ordered that $360 be taxed as the fee due R. Waples, U. S. dist. att'y, for services rendered up to date, June 27th, 1864.

Intervention of the State of Louisiana.—Filed August 31st, 1864.

United States district court, eastern district of Louisiana.

UNITED STATES
vs.
THOMAS J. SEMMES.

To the honorable E. H. Durell, judge of the district court of the United States in and for the eastern district of Louisiana:

The intervention of B. L. Lynch, attorney-general of the State of Louisiana, and in his said capacity representing said State, alleges and articulately propounds as follows:

That the defendant herein is indebted unto the said State of
34 Louisiana, herein intervenor, in the sum of $114.40, for this, to wit:

That, in the year 1861, an assessment was duly and legally made by the State assessor of the State of Louisiana, of all the property within the limits of the parish of Orleans; that the said assessment-roll was duly adopted after the delay required by law, and shows that the State tax of the said defendant amounts to the sum of $55.45 for said year; that in the year 1862 an assessment was made in like manner and form, as required by law, by the said State assessor, of all the property contained within the limits of said parish, and that the def't herein stands assessed upon said assessment-roll of the year 1862 for the sum of $58.95, for property owned by him in the city of New Orleans during

the latter year, which two sums, herein above referred to, amount
35 to $114.40, all of which will more fully appear from a certified copy of each of said assessments-rolls, and other evidence to be produced upon the trial of this cause.

That, under and by virtue of an act of Congress approved July 16th, 1862, the proceedings in this case must conform, as nearly as may be, to proceedings in admiralty or revenue cases, and that, according to admiralty proceedings & jurisdiction, ordinary or general creditors may claim the property or proceeds of property brought under registry and to be disposed of or distributed by the court.

That, under and by virtue of the laws of the State of Louisiana, the property seized and taken into possession by the marshal of the United States, was, at the time of such seizure and taking into posses-
36 sion, pledged to the State of Louisiana in payment of her claims as one of his creditors.

That, under and by virtue of the laws of the State of Louisiana, in such cases made and provided, intervenors has a lien and privilege upon the property seized by the marshal aforesaid, which lien and privilege is of a higher rank than any mortgage or other incumberance whatever; that the said property, at the time of such seizure, and previous thereto, was held and owned by said Thomas J. Semmes, subject to and encumbered with a lien and privilege for the payment of intervenor's claim, amounting, as aforesaid, to $114.40.

That, at the time of filing libel or information, and at the time of seizure aforesaid by the marshal, intervenor was entitled, by the laws of Louisiana, to enforce her claim and demand specifically against
37 the property seized and taken as aforesaid into the hands of the United States marshal.

That all and singular the premises are true and within the jurisdiction of this court.

Wherefore intervenor prays that by an order of this honorable court she may be authorized to appear and prosecute this intervention; that due process of law, according to the course and practice of this court in like cases may issue, and that Rufus Waples, esq., district attorney for said district, may be cited to appear and answer all and singular the matters aforesaid, and that this honorable court would be pleased to declare, pronounce, and decree that the claims and demands of intervenor against the said Tho's J. Semmes, amounting to the sum of $114.45 as herein above set forth, be allowed; that judgment for
38 said claim be rendered in favor of intervenor and against the said Th's J. Semmes; that the lien and privilege aforesaid upon the lot of ground seized by the marshal herein be recognized and enforced for the payment of intervenor's aforesaid claim, with her costs in this behalf expended

That in the event of this court proceeding to render judgment of condemnation against said lot, then that your honor, notwithstanding such condemnation, and before awarding the aforesaid lot of ground or property, or the proceeds arising therefrom to the United States, or to any inferior or inferiors, person or persons whatsoever, will first provide for the payment by such lot, or its proceeds, if the same is sold at suit of Government, of intervenor's claim and demand aforesaid, and that intervenor may have such other and further relief in the premises
39 as in law and justice she may be entitled to receive, with her costs, & etc.

(Signed) B. L. LYNCH,
Attorney-General, for Intervenors.

Sworn to and subscribed before me this 31st day of August, 1863.
(Signed) K. LOEW, *D'y Clerk.*

Tax-bills referred to in foregoing intervention.

The State of Louisiana, 1st district of New Orleans.

Received of Mr. Tho's J. Semmes, the sum of $55.45 State tax, for the year 1861, on the property designated on the other side, in conformity to law.

(Signed) M. T. STOEKER, *Coll'r.*
NEW ORLEANS, , 1864.
$55.45. Per
Notified , 1862.

	Square 99, R. E. Annunciation	$18,000
40	Slave, 1	650
		$18,650 00

48] *Tax-bill for* 1862.

The State of Louisiana, 1st district of New Orleans.

Received of Mr. Thomas J. Semmes the sum of $58.95 State tax, for the year 1862, on the property described on the other side, in conformity to law.

(Signed) W. T. STOEKER, *Coll'r.*
NEW ORLEANS, 1862.
$58.95. Per
Notified , 1863.

Square 99, R. E. Annunciation	18,000
1 slave	850
Jewelry	1,000
	$19,850

September 6th, 1864.
Marshal's bill taxed as follows:

Fees	$19 50
Disbursements	48 18
	$67 68

41 *Notice to take testimony and service.—Extract from the minutes.*

Order or notice to take testimony.

U. S.
vs. } No. 7643.
PROPERTY OF T. J. SEMMES.

To LEVI PIERCE, Esq.:

You are hereby notified that testimony will be taken in the above-entitled cause on Thursday, the 1st day of December, 1864, at the clerk's office, at 12 m., on behalf of libellant.

New Orleans, Nov. 30th, 1864.
(Signed) K. LOEW, *D'y Clk.*

Service.

Received November 30th, 1864, and on 1st Dec'r, 1864, served a copy of the within notice on L. Peirce, esq., at his office, by leaving it in the hands of J. W. Gurley, esq.

New Orleans, Dec'r 1st, 1864.

(Signed) M. EAGAN,
D'y U. S. Marshal.

42 *Testimony of Donald McMickle for libellant.—Taken Dec'r 1st, 1864.—Filed 26th Dec'r, 1864.*

United States district court, eastern district of Louisiana.

THE UNITED STATES
vs.
PROPERTY OF THO'S J. SEMMES.

U. S. dist. att'y for libell't.
Before Cha's Claiborne, U. S. commissioner.

DONALD MCMICKLE, for libellants, sworn, deposes.

I reside in New Orleans. I have been residing here for 15 or 16 years. I know Tho's J. Semmes. I have known him for 6 or 7 years. I saw him in Richmond in the winter of 1862 and 1863. He was a member of the confederate congress; he was a senator.

I saw him in his seat in the senate. I spoke to him in the sen-
43 ate. I heard him make a motion in the senate at that time.

I saw him two or three different times in his seat in the senate. I saw him the last time in Jackson, Mississippi; this was in August, 1864. I spoke to him and he told me that he was going to speak at Jackson that night. I left and did not hear his speech; I saw a report of it afterwards, but do not remember its contents. When I saw him in the confederate senate in Richmond he was exercising the functions of a confederate senator.

(Signed) DONALD MCMICKLE.

Sworn to and subscribed before me this 1st day of December, 1864.

(Signed) CHA'S CLAIBORNE,
U. S. Comm'r.

Notice to take testimony.

UNITED STATES
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

To LEVI PIERCE, Esq.:

44 You are hereby notified that testimony will be taken in the above-entitled cause on Saturday, 24 December, 1864, at the clerk's office, at 1 p. m., on behalf of libellant.

(Signed) W. S. BENEDICT,
D'y Clerk.

NEW ORLEANS, 22*d Dec.* 1864.

Service.

Received December 22d, 1864, and on the same day, month, and year, served a copy of the within notice on Levi Pierce, esq., at his office, in the hands of J. W. Gurley, esq., att'y at law.

(Signed) M. EAGAN, *D'y U. S. M.*

Dec'r 24, 1864.

Order.—Cause fixed & notice & service.

Order fixing cause for trial.

JANUARY 6TH, 1855.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

45 On motion of the U. S. attorney, R. Waples, esq., ordered that this cause be assigned for trial on Monday, 16th January, 1865, at 10 o'clock, and that the parties interested be duly notified thereof.

Notice of trial.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

To B. L. LYNCH, and LEVI PIERCE, Esqs:

You are hereby notified that the above cause has been assigned for trial on Monday, the 16 day of January, 1865, at 10 a. m.

By order of court.

New Orleans, January 6, 1865.

(Signed) W. S. BENEDICT, *D'y Clerk.*

Service.

Received 7th January, 1865, and on the 9th of same month and year served a copy of the within notice on Levi Pierce, esq., & B. L. Lynch, esq., in person at their respective offices.

Janr'y 13, 1865.

(Signed) M. EAGAN,
D'y U. S. M.

46 *Bond for costs.*

UNITED STATES OF AMERICA,
Eastern District of Louisiana ss, to wit:

Personally appearing before me, the undersigned United States commissioner for the eastern district of Louisiana, aforesaid, The Merchants' Mutual Insurance Company, by their president, Ch's Sagory as principal and Ch's Sagory as surety, do hereby acknowledge themselves jointly and severally, to be indebted unto the U. S. of America in the full sum of $250, lawful money of the United States, to be levied of their goods, chattels, lands, and tenements, for the use of the said United States, and for the payment whereof they jointly and severally bind

themselves, their heirs, executors, and administrators, firmly by these presents.

Whereas, in the matter of the United States vs. Property of Thomas J. Semmes, No. 7643, of the docket of the district court of the
47 United States for the eastern district of Louisiana, a claim against said property has been filed on behalf of the Merchants' Mutual Insurance Company.

This obligation to be null and void, on condition that the said Merchants' Mutual Insurance Company shall abide by the final decree rendered in the cause, and pay all such costs, expenses, and damages, as shall be awarded by the court, upon the final decree, whether it is rendered in the original or appellate court; otherwise, this obligation to remain in full force and virtue.

CH'S SAGORY, *Pres't.* [SEAL.]
CH'S SAGORY. [SEAL.]

Signed and sealed at the city of New Orleans, this 12 day of January, 1865, in presence of—

K. LOEW,
Clerk to U. S. Com'r E. D. of La.

Hearing and continuance.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

48 This cause was called up for trial. District attorney for libellants. When after hearing the pleadings and evidence the same was continued indefinitely.—*Extract from minutes of 16th January*, 1865.

Notice to take testimony & service.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

To CH'S CLAIBORNE, and L. PIERCE, Esqs.

You are hereby notified that testimony will be taken in the above entitled cause, on Thursday the 19 day of January, 1865, at the clerk's office at 10 a. m.

New Orleans, January 18, 1865.

(Signed) W. S. BENEDICT, *D'y Clerk.*

Service.

Received January 18, 1865, and on the same day, month, & year,
49 served a copy of the within notice on C. Claiborne, esq., U. S. commissioner in person, and on Levi Pierce, esq., in the hands of J. W. Gurley, esq., at the office of said L. Pierce, esq.

New Orleans, January 19, 1865.

(Signed) M. EGAN,
D'y U. S. M.

Testimony on behalf of libellants.

UNITED STATES
vs.
PROPERTY OF T. J. SEMMES.

Testimony taken in presence of district attorney, New Orleans, Jan'ry 19, 1865, at 10 a. m.

HARMON DOANE, being duly sworn for libellants, deposes and says:

I know Mr. Th's J. Semmes. I saw him in Richmond about a year ago. He was doing nothing to my knowledge when I saw him. He resided in this city before the war. He was represented, by common report and by the public prints, to be a senator of the so called Confederate States.

50 I have no doubt that Mr. Semmes is a senator of the so-called Confederate States.

I believe Mr. Semmes sides with the enemies of the U. S. in this contest.

(Signed) HARMON DOANE.

Sworn to & subscribed before me, this 19 Jan'ry, 1865.

CH'S CLAIBOBNE,
U. S. Comm'r.

Testimony of Robert Dalton.

ROBERT DALTON, being duly sworn for libellants, deposes and says:

I know Mr. Tho's J. Semmes when I see him.

I don't know that I ever saw him in Richmond. I believe I saw him at Jackson, Miss., about two years ago.

The general report is, that he is a senator of the so-called Confederate States of America; never saw him officiate as such. I was in the Confederate States service. I was in the 14th Louisiana Regiment, captain of Franko Guards, Co. A. I never heard Mr. Semmes make but

51 one speech, and that was at New Orleans some years ago; he was then advocating the cause of Breckenridge & Lane.

There is no doubt resting in my mind but that Semmes is a senator of the States aforesaid.

I returned to this city about a year ago or more.

(Signed) ROBERT DALTON.

Sworn to & subscribed before me, this 19 January, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

Notice to take testimony and notice.

Notice to take testimony, Jan'ry 23, 1865.—No. 7643.

U. S.
vs.
PROPERTY OF T. J. SEMMES.

To LEVI PIERCE and CHA'S CLAIBORNE, Esq. .

You are hereby notified that testimony will be taken in the above-

entitled cause on Wednesday, the 25th day of January, 1865, at the clerk's office, at 1 p. m., on behalf of libellants.

52 New Orleans, January 23d, 1865.

(Signed) W. S. BENEDICT,
D'y Clerk.

Service.

Received January 23d, 1865, and on the 24th day of the same month and year, served a copy of the within notice on Ch's Claiborne, esq., U. S. com'r in person, and on L. Pierce, esq., in the hands of J. W. Gurley, esq., attorney, at the office of L. Pierce, esq.

January 24, 1865.

(Signed) M. EGAN,
D'y U. S. M.

Testimony for libellants.

U. S. district court, E. D. of La.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

Testimony taken in presence of district attorney, New Orleans, January 25th, 1865.

ALEXANDER WHITE, being duly sworn, deposes & says:

I know Thomas J. Semmes, by representation and by sight; 53 knew him here and in the confederacy; not personally acquainted with him, but knew him.

He was in the rebel congress since the 17 July, 1862, and believe he is still a member of that congress.

I believe he was formerly attorney-general of the U. S.

(Signed) ALEX. WHITE.

Sworn to and subscribed before me this 25th January, 1865.

(Signed) CHA'S CLAIBORNE,
U. S. Com'r.

Testimony of Joseph D. Howell.

Being duly sworn deposes and says:

I knew Mr. Thomas J. Semmes; knew him here and in the confederacy. I think he was a member of the rebel congress since the 17th day of July, 1862, and believe he stills holds that office.

34 I believe he once held office under the Government of the United States.

(Signed) J. D. HOWELL.

Sworn and subscribed before me this 25th Janu'y, 1865.

(Signed) CH'S CLAIBORNE,
U. S. Com'r.

Order.—Cause fixed and notice.

Order, cause fixed for trial.

JANUARY 3D, 1865.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } No. 7643.

On motion of R. Waples, U. S. att'y, ordered that the cause be assigned for trial on the 3rd February, 1865, at 11 a. m., & that the parties interested be notified thereof.

Notice.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To LEVI PEIRCE and B. L. LYNCH, Esq's:

You are hereby notified that the above case has been assigned for trial on Friday, 3d February, 1865, at 11 a. m.

55 *Service.*

Received January 30, 1865, and on the same day, month, and year, served a copy of the within notice on B. L. Lynch, esq., personally; also a copy on Levi Pierce, esq., by leaving it at his office in the hands of J. W. Gurley, esq.

New Orleans, Jan'ry 30, 1865.

(Signed) M. EGAN,
D'y U. S. Marshal.

Note of evidence taken on trial.

FEBR'Y 3, 1865.

U. S.
vs
P E RTY OF T. J. SEMMES. } 7643.

Libellants offered in evidence the monition, warrant, and marshal's return; the evidence of Donald McMickle, taken before U. S. comm'r Claiborne, Dec'r 1, 1864; that of Harmon Doane and Rob't Dalton, taken 19 January, 1865, and that of Alex. White and J. D. Howell before same commissioner, Jan'ry 25th, 1865.

Case laid over for further proof.

56 *Hearing and continuance.*

FEBRUARY 3D, 1865.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

This cause came up for trial—district attorney for libellants—when, after hearing the pleadings and evidence, the cause was ordered to be laid over for further action.—*Extract from the minutes.*

Notice to take testimony.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

To LEVI PIERCE, Esq.,

You are hereby notified that testimony will be taken in the above-entitled cause on Monday, 6th February, 1865, at the clerk's office, at 1 p. m., in behalf of libellants.

(Signed) W. S. BENEDICT.

NEW ORLEANS, *Febr'y 4th*, 1865.

Service.

57 Received February 4th, 1865, and on same day, month, and year, served a copy of the within notice on L. Peirce, esq., by leaving it in the hands of J. W. Gurley, esq., at the office of said L. Pierce, esq.

(Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *Feb'ry* 6, 1865.

Notice to take testimony.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

To LEVI PIERCE, Esq.

You are hereby notified that testimony will be taken in the above-entitled cause, on Thursday the 9th February, 1865, at the clerk's office, at 11 a. m., on behalf of libellants.

(Signed) W. S. BENEDICT, *D'y Clk.*

NEW ORLEANS, *Feb'ry 8th*, 1865.

Service.

Received February 8th, 1865, and on the same day, month, and year, served a copy of the within notice on Levi Pierce, esq., by leav-
58 ing it at his office in the hands of J. W. Gurley, esq., attorney.

M. EGAN.
D'y U. S. Marshal.

NEW ORLEANS, *Feb'ry 9th*, 1865.

Testimony for libellants.

United States dist. court, E. D. of La.

UNITED STATES
vs. } 7643.
PROPERTY OF T. J. SEMMES.

Testimony taken in presence of district attorney & before Chas. Claiborne, U. S. comm'r, N. O., Feb'ry 9th, 1865.

Testimony of John Holmes.

Being duly sworn, deposes and says: I know Mr. T. J. Semmes, formerly of this city; I knew him here. He was attorney-general for the

State of Louisiana. It is my belief that he is a member of the rebel senate. I last saw him in Clinton, La., two years ago last November. He had just then returned from Richmond, to the best of
59 my belief.
(Signed) JNO. HOLMES.

Sworn to and subscribed before me this 9 Febr'y, 1865.
(Signed) CH'S CLAIBORNE,
U. S. Comm'r.

Amended intervention.—Filed 21 Febr'y, 1865.

UNITED STATES
vs.
PROPERTY OF T. J. SEMMES. } 7643.

U. S. district court for the E. D. of La.

The amended and supplemental petition of intervention, in this cause, of the Merchants' Mutual Ins. Company, with respect represents that the president and directors of the said company are all loyal citizens of the U. S.; that they inadvertently omitted so to allege in their original petition.

Wherefore they pray leave to file this as an amendment & supplement thereto.
(Signed) L. PEIRCE.

60 *Order.*

Let this be filed.
New Orleans, 21st Febr'ry, 1865.
(Signed) E. H. DURELL, *Judge.*

Order.—Cause fixed for trial.

APRIL 3D, 1865.

U. S.
vs.
PROPERTY T. J. SEMMES. } 7643.

On motion of R. Waples, U. S. att'y, ordered that the cause be assigned for trial on Wednesday, 5th April, 1865, at 11 a. m., and that all parties interested be notified hereof.

Notice and service.

NOTICE.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

To LEVI PIERCE, Esq.:

You are hereby notified that the above cause has been assigned for trial on Wednesday, 5th April, 1865, at 11 a. m.
By order of court, New Orleans, April 4th, 1865.
(Signed) W. S. BENEDICT, *D'y Clk.*

61 *Service.*

Received, April 11, 1865, and on the same day, month, and year served a copy of the within notice on Levi Pierce, esq., by leaving at his office, in the hands of J. W. Gurley, esq.

(Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *April 4th*, 1865.

Hearing and decree of condemnation.

APRIL 5TH, 1865.

UNITED STATES
vs. } 7643.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES.

This cause came up for trial—district att'y for libellants—and the monition issued in this case having been heretofore returned, the usual proclamation having been made, the default of all persons duly entered, and the law and the evidence duly considered—

It is, on motion of the district attorney, ordered, sentenced, and
62 decreed by the court now here, and his honor the district judge, by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the six lots of ground, with the buildings thereon, the property of Thomas J. Semmes, fully described in the libel on file, be, and they are hereby, condemned as forfeited to the United States.

It is further ordered that the clerk of this court issue a writ of venditioni exponas to the marshal of the district, and that upon that return thereof the proceeds be distributed according to law, the legal rights of the intervenors being reserved in the premises.

Judgment rendered 5th April, 1865.

Judgment signed 10th April, 1865.

(Signed) E. H. DURELL, *Judge.*

Order revoking taxation of U. S. att'y's fee.

APRIL 7TH, 1865.

63 Ordered that all entries on the minutes of 28th, 29th, & 30th June, 1864, taxing the fees of the district attorney in confiscation cases be cancelled and annulled, the same having been improvidently granted.—*Extract from the minutes.*

Venditioni exponsas.—Issued 11th April, 1865.

United States dist. court, eastern district of Louisiana.

The President of the United States of America to the marshal of the eastern district of Louisiana, or either of his deputies, greeting:

Whereas at a district court of the United States, holden at New Orleans for and within said district, on the fifth day of April, A. D. 1865, six lots of ground, with all the buildings and improvements thereon, the property of Thomas J. Semmes, fully described in the libel on file, were, after proclamation and due proceedings, decreed forfeit and
64 ordered to be sold at public auction: These are, therefore, to

command you to sell to the highest bidder, at public auction, at the Merch'ts' Exchange, No. 18 Royal street, within said district, on the 18th day of May, 1865, at 12 o'clock m., the said 6 lots of ground, &c., first giving ten days' notice at least of the time and place of sale, by advertising the same in the True Delta, in one of the newspapers printed at New Orleans, and by proclamation, in the usual form, on the day of sale; the money arising from the sale to be paid into the registry of the said court, to be disposed of as the law in this case directs; and make due return hereof, with your doings herein.

Witness the honorable Edward H. Durell, at New Orleans, this 11th day of April, A. D. 1865, and 89th year of the Independence of the United States of America.

[SEAL.] (Signed) W. S. BENEDICT,
D'y Clerk.

65 *Marshal's return, June* 17, 1865.

UNITED STATES OF AMERICA,
East'n Dist. of Louisiana:

NEW ORLEANS, *June* 15, 1865.

Pursuant to this precept, I have caused the property within named to be offered for sale by public auction on the day, hour, and place therein directed, having given 30 days' previous notice of the time, place, and manner of the sale in the True Delta, one of the newspapers printed in the city of New Orleans, and by the crier on the day of sale, and at such sale the purchasers were as under; but there not being at this offering two-thirds of the appraised value of said property, I withdrew it from sale, and again advertised the said property for sale in the True Delta, a daily paper printed in New Orleans, 10 days, as per order of the hon. dist. court E. D. of L'a, in which advertisement the day, place,
66 & hour of sale, as well as the terms thereof, were fully set forth as per the above-named order, as also by the crier at the time and place of sale, when, after having fulfilled all the previous legal requisites, I offered the above-named property for sale to the highest bidder, at the above-named place and hour, on Tuesday, the 13th day of June, 1865, and at that sale the purchaser was E. W. Burbank, five certain lots, with the improvements thereon described, as in the printed slip annexed to the certificate of mortgages hereto appended, for—

One note at 1 year from day of sale, for	$5,250
And cash at adjudication	$5,250
Total am't of sale	$10,500

The lot of ground situate in the square bounded by Edwards, Estelle, Camp, & Magazine streets, measuring 27 feet 10 inches 5 lines front on Edward street, by a depth of 31 feet 11 inches 5 lines between
67 parallel lines, and which had been condemned, was, by an order of court, restored to a certain claimant, and was not offered for sale in obedience to said order.

Whereby the gross sales amounted to ten thousand five hundred dollars, which I pay over to C. Claiborne, esq., the clerk of the court aforesaid, to be disposed of as the court directs.

Attest: A. BAUDOUIN,
D'y Marshal.

Received from Cuthbert Bullitt, U. S. marshal, ten thousand five hundred dollars, being (as he saith) the proceeds of the aforegoing sale; the monies to be disposed of as the court directs, and for which I have signed duplicate receipts.

(Signed) K. LOEW, *D'y Clerk.*

NEW ORLEANS, *June* 16, 1865.

Mortgage-certificate annexed to marshal's return.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Or-
68 leans, city of New Orleans, certifies that in the records of his office there are no other mortgages standing in the name of Thomas J. Semmes, and recorded against the property described in the printed slip hereunto annexed, than the following, to wit:

1. (B. 72, fo. 47.) The one resulting from the inscription of a building-contract by act before J. W. Breedlove, notary, the 3 Aug., 1858, entered into by said Semmes & Jamison & McIntosh, builders, by which said Semmes bound himself to pay unto said builders the sum of $15,000, they binding themselves to erect a dwelling-house, &c., on the portion of ground having 60 feet on Annunciation st., by 155 f't 8 inches on Edward street.

2. (B. 75, fo. 658.) The one he granted on a portion of ground forming the whole of lot 16 & 17, and parts of Nos. 18, 14, & 15, firstly, secondly, & thirdly described in favor of the Merchants' Mutual
69 Insurance Company, to secure payment of $6,000, and interest, as per act before said Breedlove, notary, the 5th March, 1860.

3. (B. P. 1, fo. 370.) The privilege in favor of the 2d draining district.

NEW ORLEANS, *May* 11, 1865.

(Signed) J. W. MADDEN, *Recorder.*

The property mentioned in the foregoing certificate and recited in the printed slip annexed is the same property described in the libel with the exception of the lot in square between Edward, Estelle, Camp, & Magazine, released to I. Bloom.

Order.—Cause fixed on intervention.

APRIL 25, 1865.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

On motion of J. W. Gurley, of counsel for the Merchants' Mutual Insurance Company, intervenors in above case, ordered that their said intervention be assigned for hearing for Friday 28th instant, at 11 a. m.

70 *Answer of district attorney.*

UNITED STATES
ads. } No. 7643.
MERCH'TS' MUTUAL INS. CO., INTERVENOR IN
six lots of ground, property of T. J. Semmes.

To the honorable Edward H. Durell, judge of the district court of the United States for the eastern district of Louisiana:

The answer of Rufus Waples, attorney of the United States of Ame-

rica for the said eastern district of Louisiana, who prosecutes herein for the United States in this behalf, to said bill of intervention exhibited by the Merch'ts' Mutual Insurance Company in this cause.

This defendant, Rufus Waples, attorney of the United States of America for said district, reserving to said United States all right of exception to said amended & supplemental bill of intervention of said
71 Merchants' Mutual Insurance Company, for answer thereto, or unto so much and such parts thereof as he is advised is material or necessary for him to make answer unto, answering, saith:

That this defendant, attorney as aforesaid, in behalf as aforesaid, expressly denies that the said intervenors, the persons composing the firm & company of said Merchants' Mutual Insurance Company, are loyal citizens of the United States.

Further answering, this defendant, attorney as aforesaid, insists that by virtue of a certain act of the Congress of the United States, approved March 3d, 1863, and entitled "An act to protect the liens upon vessels in certain cases and for other purposes," that in all cases now or hereafter pending, wherein any ship, vessel, or other property shall be condemned in any proceeding, by virtue of the acts above mentioned or of any other laws on that subject, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and
72 before awarding such ship, vessel, or other property, or the proceeds thereof, to the United States or to any informer, first provide for the payment out of the proceeds of such ship, vessel, or other property, of any bona fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such ship, vessel, or other property, under the laws of the United States or of any loyal State thereof, provided that no such claim shall be allowed in any case where the claimant shall have knowingly participated in the illegal use of such ship, vessel, or other property; and provided, also, that this act shall extend to such claims only as might have been enforced specifically against such ship, vessel, or other property in any loyal State wherein such claim arose, the said intervenor, the Merchants'
73 Mutual Insurance Company, is not entitled to any relief in this honorable court against the said property seized under said libel; and this defendant, attorney as aforesaid, claims the same benefit as if he had specially pleaded the said statu'es in this cause.

And the defendant's attorney, as aforesaid, in behalf as aforesaid, denies that said Thomas J. Semmes is indebted to said Merchants' Mutual Insurance Company in the manner & form and amount as stated in said bill of intervention amended and supplemental; without this, that there is any other matter, cause, or thing in the said intervenor's bill contained material or necessary for this defendant, attorney as aforesaid, to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true, to the knowledge or belief of this defendant, attorney as aforesaid, is ready and willing to aver, maintain, and prove, as this honorable
74 court shall direct, and humbly prays that this honorable court will decree that said intervenor's bill be dismissed, with costs and charges in this behalf wrongfully sustained.

And, as in duty bound, will ever pray, etc.

(Signed) RUFUS WAPLES,
U. S. Dist. Att'y for the E. D. of La.

Ruling of court on intervention.

APRIL 28, 1865.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

The intervention filed by the Merchants' Mutual Insurance Company in this case came up for trial—J. W. Gurley for intervenors; R. Waples, U. S. attorney—when it is ordered that all further action upon their claim be stayed until said company shall appear in court through loyal agents.—*Extract from minutes.*

75 *Petition of Isaac Bloom praying restitution of one lot.—Filed May 2d, 1865.*

UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF THO'S J. Semmes. } No. 7643.

United States district court, eastern district of Louisiana.

The petition of Isaac Bloom, a loyal citizen of the United States, residing in the city of New Orleans, respectfully represents that, on the 1st October, 1858, your petitioner acquired, by purchase, from Thomas J. Semmes, by act passed before J. Graham, notary public, among other property a certain lot of ground, or portion of ground, in the 1st district of this city, in square bounded by Edward, Magazine, Estelle, and Camp streets, being the rear portion of a lot designated by the No. 1 on plan drawn by A. D. Hunecourt, dated Nov'r 9, 1847, and
76 deposited in the office of the late notary, Jules Mossy, and measuring 27 feet 2 inches & 5 lines front on Edward street, by a depth of 31 feet 11 inches and 5 lines between parallel lines, English measure, as will fully appear, together with other necessary particulars, by reference to said act of sale, a duly certified copy of which is attached, and made part of this petition; that said conveyance was duly registered in the conveyance office, according to law, on the 5th October, 1858, as will appear by reference to the certificate superscribed on said copy, & your petitioner has ever since held, owned, & enjoyed said property.

And your petitioner further alleges that said property has been proceeded against in the above-entitled case of confiscation for the use of the United States, &c., as the property of said Thomas J. Semmes; that in error of the rights and ownership of your petitioner, and with
77 the representation to and impression of the court that the same belonged to said Thomas J. Semmes, the said property among others was, after due proceedings had, decreed to be confiscated to the use, &c., of the United States; that said decree is in error of the rights of your petitioners, and is calculated to inflict irreparable injury upon him unless the court will be pleased to open said decree so far as said property and the rights of your petitioner are concerned, and to order the said property to be rel'ased from the operation of said decree, and to be restored to him.

That said property by virtue of a writ of venditioni exponas, is advertised for sale by the U. S. marshal for the 18 May, 1865.

Wherefore your petitioner respectfully prays that Rufus Waples, esq., U. S. dist. attorney, may be cited to show cause, if any he has, why said decree shall not be opened by this hon. court so far as said property and the rights of your petitioner in the premises are con-
78 cerned; that after due proceedings had it may please this hon. court to open said decree of confiscation against said property and considering the same as in error quoad the same, may release said property from its operation and restore it to petitioner as the legal owner thereof; & the prays for general relief and he will ever pray &c.

(Signed) I. BLOOM.

Sworn to and subscribed before me this 28 day of April, A. D. 1865
C. IZARD, 1 *J. P.*

[5-cent stamp.]

(Signed) E. W. HUNTINGTON.
" ALFRED PHILIPS.
Proctors for Pet'r.

Submitted by consent.
(Signed) RUFUS WAPLES.
U. S. Att'y.
C. ROSELIUS &
ALF. PHILIPS.

Act of sale to I. Bloom.—Filed with petition, May 2d, 1865.

STATE OF LOUISIANA,
Parish and City of New Orleans:

79 Be it known that on this 1st day of October, in the year of our Lord 1858, and of the Independence of the United States of America the 83d, before me, James Graham, a notary public in and for the parish and city of New Orleans, State of La., duly commissioned and qualified, and in the presence of the witnesses hereinafter named, undersigned, personally came and appeared Thomas J. Semmes, of this city, who declared that for the consideration hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over with all legal warranties unto Isaac Bloom, also of this city here present, accepting and purchasing for himself, his heirs and assigns, and acknowledging delivery and possession thereof, the following described property, to wit:

1st. A certain lot of ground situate in the 1st district of this
80 city in the square bounded by Edward, Magazine, Estelle, and Camp streets, designated by the No. 3, and which is a subdivision of the lot No 4, according to a plan drawn by Bourgerol, annexed to an act of sale of the 13th May, 1834, passed before the late notary W. Y. Lewis, and to which plan reference is hereby made. Said lot measures 28 feet 4 inches front on Edward street and is 127 feet 10 inches 5 lines deep, between parallel lines, American measure.

2d. And a certain lot of ground or portion of ground in the district and square above mentioned, being the rear portion of a lot designated by the No 1, on a plan drawn by A. d'Hemecourt, dated Nov'r 9th, 1847, deposited in the office of the late notary, Jules Mossy, and measuring 27 feet 2 in. & 5 lines front on Edward st., by a depth of 31 feet 11 inches & 5 lines between parallel lines, English measure.

Said property being so conveyed, together with the buildings and

81 improvements thereon and the rights, privileges, ways, and appurtenances thereunto belonging or in any wise appertaining, and it was acquired by said vendor by purchase, that herein firstly described, from Robert W. Estlin, by an act passed before Richard Bronana, notary in this city, on the 9th day of June, 1852, and that herein secondly described from Elias W. Digges, by an act passed before T. O. Stark, a notary in this city, on the 9th day of June, 1852.

By reference to the annexed certificate of the recorder of mortgages in & for this city and parish, dated the 29 Sept., 1858, it will appear that the property herein conveyed is free from all mortgages or other incumbrances in the name of the said vendor: To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns forever.

82 And the said vendor hereby binds himself and his heirs forever to warrant and defend the property and appurtenances herein conveyed against all legal claims and demands whatever.

The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he himself is entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions to be by him enjoyed, and exercised in the same manner as they might have been by the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of four thousand and fifty dollars ($4,050) and interest, as hereinafter expressed, ($1,050) of which have been paid in ready money at the execution hereof by the said purchaser, to the said vendor; for the balance the said purchaser has given his two promissory notes for the sum of $1,500 each, drawn to the order of and endorsed by himself,

83 dated the 1st day of October, 1858, and made payable on the 1st day of April, 1860, and the 1st day of April, 1861, respectively, after date, with interest from date until maturity, at the rate of 6 % per annum, and from maturity, if not then paid, at the rate of 8 % per annum until paid, which said notes after having been paraphed by me, said notary, to identify them with this act, were delivered to said vendor who hereby acknowledges the receipt thereof as well as of the ready money.

And in order to secure the payment of said notes at maturity, as well as of all interest that may accrue thereon, said purchaser hereby specially mortgages & hypothecates the said property in favor of his said vendor, or of any other holder or holders of said notes or either of them, promising and binding himself not to alienate, deteriorate, or encumber the property herein conveyed to the prejudice of this mortgage. Said

84 purchaser also consents and agrees in case the said notes are not paid at maturity that said vendor or any other holder or holders of said notes are authorized to cause said property to be seized and sold under executory process issued by any competent court, and to confess judgment for the full amount of said notes, together with all costs, charges, lawyer's fees not exceeding 5 %, and other expenses whatever. Said purchaser furthermore binds himself to insure and keep insured the property aforesaid, and to transfer the policy or policies thereof to the said vendor, such transfers to be and remain until said notes are paid.

And here the said vendor produced and delivered unto the said notary, an act of renunciation executed by Mrs. Myra E. Knox, his wife, of lawful age, before John S. Hollingshead, a commissioner of the State of Louisiana in & and for the Dist. of Columbia, on the 16th Sept., 1858,

and which is hereto annexed, whereby the said Mrs. Semmes did
85 formally renounce all her rights, mortgages, and privileges on the said property in favor of the said purchaser. The taxes due on the said property have been paid as per the receipts therefor, which have been exhibited to me, the said notary.

This done & passed in my office, in New Orleans aforesaid, in the presence of Arthur Brocard and Andrew Hero, jr., witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary.

(Original signed) THOS. J. SEMMES.
I. BLOOM.
ARTHUR BROCARD.
ANDREW HERO, JR.
JAMES GRAHAM,
Not. Pub.

A true copy.
(Signed) JAS. GRAHAM,
Not. Pub.

Certificate from register of conveyances attached.

I, register of conveyances, certify that the foregoing act was
86 this day recorded in my office in book 78, fo. 249, New Orleans, 5 October, 1858.

New Orleans, 26 April, 1865.
(Signed) FELIX M'CULLOCK, *Register.*

Submission of Bloom's claim.

MAY 3D, 1865.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

The claim herein filed by Isaac Bloom for the restitution of a portion of the property libelled in this case was this day, by consent of counsel, submitted to the court upon the pleadings and the evidence on file.—*Extract from minutes.*

Order suspending sale of lot claimed by Bloom.

MAY 13, 1865.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

Ordered that the sale of lot No. 1, in square bounded by Edward,
Magazine, Camp, & Estelle streets, claimed by Isaac Bloom, be
87 suspended until further order, and that the marshal be notified thereof.—*Extract from minutes.*

Order fixing intervention of M'ch'ts' Mutual Ins. Co., 26th May, 1865.

U. S.
vs. } 7643.
PROPERTY OF T. J. SEMMES.

On motion of L. Pierce, att'y for the Merch'ts' Mutual Insurance Com-

pany, ordered that the cause be assigned for hearing, upon the intervention of said company, on Monday, 29th inst., at 11 o'clock a. m., and that the dist. att'y be notified hereof.

Hearing.—May 29, 1865.

Memoranda of evidence offered by Merchants' Mutual Insurance Company, intervenors.

1st. Amnesty oaths of the directors of the company on file in the case of The U. S. vs. Property of Marshall J. Smith, No. 7644 of the dockets.

2d. Notes filed with petition of intervention.

3d. Act of mortgage.

88 The act of mortgage has been withdrawn by the co. The note and certificate from the mortgage-office are copied at pages .

Amnesty oaths of the directors of the Merch'ts' Mutual Ins. Company.

No. 102.

I do solemnly swear, in presence of Almighty God, that I will henceforth faithfully support, protect, and defend the Constitution of the United States thereunder, and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me
89 God.

(Signed) J. MORGAN HALL.

Sworn to and subscribed before me this 19th of February, 1864.

[SEAL.] (Sig.) K. LOEW,
D'y Clerk U. S. Dist. Court, E. D. of La.

United States district court, eastern district of Louisiana.

I certify the foregoing to be a true copy of the original record in this office.

Clerk's Office, May 23d, 1865.

(Sig.) W. S. BENEDICT, *D'y Clerk.*

[5-ct. stamp.]

(Endorsed:) No. 7644. U. S. vs. 5 Lots of Ground, property of Marshall J. Smith. Oath of amnesty of J. Morgan Hall. Filed May 23d, 1865. (Sig.) W. S. Benedict, d'y clerk.

No. 351.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United , and the union of the States thereunder; and that I will in like manner abide by and faithfully support all acts of

90 Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) J. VIOSCA, JR.

Sworn to and subscribed before me this 20th day of May, 1865.

[SEAL.] F. B. VINOT,

D'y Clerk U. S. Cir. Court 6th Cir. E. D. of La.

CLERK'S OFFICE.

A true copy of the original of record in this office.
New Orleans, May 23, 1865.

(Sig.) F. B. VINOT, *D'y Cl'k.*

(Endorsed:) No. 7644. U. S. vs. The Property of Marshall J. Smith. Oath of amnesty of J. Viosca, jr. Filed May 25th, 1865. (Sig.) W. S. Benedict, d'y cl'k.

No. 322.

91 I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of States thereunder; and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) J. J. FERNANDEZ.

Sworn to and subscribed before me this 18th of May, 1865.

(Signed) F. B. VINOT,

D'y Clerk U. S. Cir. Court, 6th Cir. and E. D. of La.

CLERK'S OFFICE.

A true copy of the original of record in this office.
New Orleans, May 23d, 1865.

92 [SEAL.] (Signed) F. B. VINOT, *D'y Clerk.*

(Endorsed:) No. 7644. U. S. vs. The Property of Marshall J. Smith. Oath of amnesty of J. J. Fernandez. Filed with intervention of Merch'ts Mutual Ins. Co., May 25th, 1865. (Signed) W. S. Benedict, d'y clerk.

No. 276.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of States thereunder; and that I will in

like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not
93 modified or declared void by decision of the Supreme Court: So help me God.

(Signed) L. F. GÉNÉRÉS.

Sworn to and subscribed before me this 10th day of May, 1865.

(Signed) F. B. VINOT,
D'y Clerk U. S. Cir. Court, 6th Cir. & E. D. of La.

CLERK'S OFFICE.

A true copy of the original of record in this office.
New Orleans, May 23d, 1865.
[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

(Endorsed :) No. 7644. U. S. vs. The Property of Marshall J. Smith. Oath of amnesty of L. F. Générés. Filed with intervention of M'ch'ts Mutual Ins. Co., May 25th, 1865. Signed W. S. Benedict, d'y clerk.

No. 198.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of the States thereunder; and that I will in like manner abide by and faithfully support all acts of Congress
94 passed during the existing rebellion with reference to slaves, so long and so far as not modified, repealed, or held void by Congress or by decision of the Supreme Court, and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion, having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) CH'S SAGOREY.

Sworn to and subscribed before me this 1st day of March, 1865.

(Signed) F. B. VINOT,
D'y Clerk, U. S. Cir. Court, 6th Cir. and E. D. of La.

United States circuit court, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.
New Orleans, March 13th, 1865.
[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

[5-c't. stamp.]

(Endorsed :) 7644. On intervention of Merchants' Mutual Insurance Company. Amnesty oath. Chas. Sagory. Filed M'ch 14, 1865.
95 (Signed) K. LOEW,
D'y Clerk.

No. 200.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of the States thereunder; and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court. So help me God.

(Signed) S. Z. RELF.

Sworn to and subscribed before me this 1st of March, 1865.

(Signed) F. B. VINOT,

96 *D'y Clerk U. S. Cir. Court, 6th Cir. & E. D. of La.*

United States circuit court, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

New Orleans, March 13, 1865.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

[5-cent stamp.]

(Endorsed:) 7644. On intervention of the Merchants' Mutual Insurance Company. Amnesty oath. S. Z. Relf. Filed March 14th, 1865. K. Loew, d'y clerk.

No. 197.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of the States thereunder; and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so
97 long and so far as not repealed, modified, or held void by Congress, or by decision of the Supreme Court; and that I will in like manner abide by and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) P. MASPERO.

Sworn to and subscribed before me this 1st of March, 1865.

(Signed) F. B. VINOT,
D'y Clerk U. S. Cir. Court, 6th Cir. and E. D. of La.

United States circuit court, sixth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

New Orleans, March 13, '65.

[SEAL.] F. B. VINOT, *D'y Clerk.*

[5-c't stamp.]

(Endorsed:) 7644. On intervention of Merchants' Mutual Ins. Co. Amnesty oath. P. Maspero. Filed March 14th, 1865. K. Loew, d'y clerk.

98 No. 199.

I do solemnly swear in presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitution of the United States, and the union of the States thereunder; and that I will in like manner abide by and faithfully support all acts of Congress passed during the existing rebellion with reference to slaves, so long and so far as not repealed, modified, or held void by Congress or by decision of the Supreme Court; and that I will in like manner abide by, and faithfully support all proclamations of the President made during the existing rebellion having reference to slaves, so long and so far as not modified or declared void by decision of the Supreme Court: So help me God.

(Signed) D. McCOARD.

Sworn to and subscribed before me this 1st of March, 1865.

(Signed) F. B. VINOT,
D'y Clerk U. S. Cir. Court, 6th Cir. & E. D. of La.

United States circuit court, sixth circuit and eastern district of
99 Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true copy from the original record in this office.

New Orleans, March 13, 1865.

F. B. VINOT, *D'y Clerk.*

(Endorsed:) 7644. On intervention of Merchants' Mutual Insurance Company. Amnesty oath. D. McCoard. Filed March 14, 1865. K. Loew, d'y clerk.

Judgment favor Merchants' Mutual Insurance Company.—May 29, 1865.

UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF TH'S J. SEMMES. } 7643.

This cause came up for trial on the intervention of the Mutual Insur-

ance Company—Levi Pierce for intervenors; dist. att'y for libellants—
when, after hearing the pleadings and evidence, the court being
100 satisfied that the intervenors have fully proven their claims, it is
ordered, adjudged, & decreed that said Merchants' Mutual Insurance Company have judgment in their favor for the sum of four thousand dollars with 8 % interest thereon from 5th March, 1862, till paid, with privilege and mortgage upon the proceeds of a certain portion of ground situate in the 1st district, in the square bounded by Annunciation, St. Thomas, Edward, & Benjamin streets, forming the whole of lots Nos. 16 & 17, and parts of 18, 14, & 15, & fully described in the notarial act on file and made part hereof.

It is further ordered that said intervenors (pay) contribute their share in the costs and charges herein.

Judgment rend'd May 29, 1865.

Judgment signed June 5, 1865.

(Signed) E. H. DURELL, *Judge.*

101 *Consent to open decree of condemnation.—Filed* 29 *May*, 1865.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } No. 7643.

It is agreed that, for the purpose of saving delay and expenses, the decree of confiscation herein entered be opened for the purpose of submitting the claim of Isaac Bloom, and the said claim be submitted on the evidence on file.

(Signed) C. ROSELIUS,
Proctor for Claimant.

(") RUFUS WAPLES,
U. S. Atty.

Order to open decree and submission.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF TH'S J. Semmes. } 7643.

By written consent of counsel the decree of condemnation pronounced
on 5th April, 1865, is re-opened for the purpose of submitting to
102 the court the claim of Isaac Bloom to a portion of the libeled
property, and said claim is now submitted upon the evidence on file.—*Extract from minutes of* 29 *May*, 1865.

Judgment favor Isaac Bloom.—May 31, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF TH'S J. Semmes. } 7643.

The law and the evidence considered, it is ordered, adjudged, and decreed that the intervenor, Isaac Bloom, be recognized as the rightful and bona-fide owner of a lot or portion of ground, with the improve-

ments thereon, situate in the 1st district of this city, in the square bounded by Edward, Magazine, Estelle, and Camp streets, being the rear portion of a lot designated by the No. 1 on a plan by A. d'Hemicourt, of 9 November, 1847, in the office of Jules Mossy, late notary public, measuring 27 feet 2 in. 5 lines front on Edward street by
103 a depth of 31 feet, 11 inches, 5 lines, between parallel lines.

It is further ordered that the libel so far as it affects the foregoing lot be dismissed, and that the intervenor pay costs incurred on his intervention.

Judgment rendered 31st May, 1865.

Judgment signed 10th June, 1865.

(Signed) E. H. DURELL, *Judge.*

Taxation of costs.—June 29, 1865.

U. S.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7643.

Ordered that the costs and charges in this case be taxed, allowed, and paid as follows, to wit:

District attorney, 2 %	210 00
Clerk	119 15
A. Shaw, ex-clerk	28 75
U. S. comm'r	20 00
C. Bullitt, marshal	523 49
J. Graham, ex-marshal	68 64
Appraisers Heartt & Hill	105 00
Registrar, 1 %	105 00
	$1,180 03

104 *Decree of distribution.—Entered* 29 *June*, 1865.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. Semmes. } 7643.

The U. S. marshal having returned into court the writ of venditioni exponas, showing that the libelled property upon which bears a mortgage, amounting on the day of sale in capital and interest to $5,651.50, was sold to E. W. Burbank for $10,500.00, of which half cash & half at one year.

And it appearing that the following taxes are due upon the property, to wit:

U. S. direct tax	29 70
State tax 1861	55 45
Do. '62	58 95
Do. '63	53 50
Do. '64	53 50
City tax, int. & com., '61	369 00
Do. '62	227 40
Do. '63	208 60

	Do. '64	270 00	
Clerk	6th c't, No. 15206	3 25	
Sh'ff	do.	16 19	
105 Clerk	2, No. 23462	3 25	
Sh'ff	" do	4 77	
Clerk	3, No. 18760	3 25	
Sh'ff	" do.	4 59	
			$1,361 40
& that the costs taxed am't to			$1,180 03
And it appearing further that the proportion chargeable to the mortgage-creditor, the Merchants' Mutual Ins. Co., in the taxes is		723 25	
& their proportion in costs		629 40	
It is ordered, adjudged, and decreed that after deducting the whole of the taxes & charges there be now paid to said Merchants' Mutual Ins. Co. the sum of			$2,708 57
Which is the balance of the cash on hand, the said co. being entitled to receive the further sum of			$1,590 28
Out of the proceeds of the note at 1 year for $5,250 when paid.			
Leaving a balance of			$3,659 72
accruing to the United States from the same source.			
			$10,500 00

106 MOTION TO AMEND & CORRECT DECREE OF DISTRIBUTION AND ORDER REFERRING TO U. S. COMMISSIONER.

Motion to amend & correct decree of distribution.—Filed 22 July, 1865.

U. S.
vs. } 7643.
PROPERTY T. J. SEMMES.

L. Pierce, esq., proctor for the Merch'ts' Mutual Insurance Company, intervenors, this day submitted to the court the following motion, viz:

On motion of L. Pierce, esq., att'y for intervenors, and on showing to the court that there is error in the distribution of the proceeds of the sale of the property libeled herein, in this, that the portion of the property on which the mortgage of intervenors rests was appraised at $20,000, and the two remaining lots at $1,500; that the said property was sold in block & brought the sum of $10,500, half cash & balance on credit of one year; that the proper of distribution would be said ap
praisement; that upon said basis the portion of property on which
107 said mortgage rested brought $9,767, a sum more than sufficient to pay intervenors' judgment of $5,651.50, with all taxes, costs, and charges, & that in the distribution made they are allowed only the sum of $4,298.88

It is ordered, in the presence of the dis't att'y, that the same be corrected, and that intervenors be paid the full amount of their said judgment & costs.

Whereupon the court ordered that the matter be referred to Ch's Claiborne, esq., U. S. comm'r, for investigation, and that he report thereon without delay.

Report of U. S. comm'r.—Filed 24 July, 1865.

UNITED STATES
vs.
PROPERTY OF THOS. J. SEMMES. } 7643.

On motion of Merchants' Mutual Insurance Company to ammend judgment of distribution, the undersigned, having been appointed
108 referee to report on the above motion, begs leave to state that after a thorough examination he finds that the motion sets out the facts correctly.

There is a surplus of proceeds over and above the claim, taxes, & costs.

The only question w'ether in a confiscation case an intervenor can come in and receive the full amount of his claim without contributing to taxes & costs & thereby throw the whole burden upon the United States.

Respectfully submitted.

CH'S CLAIBORNE,
U. S. Comm'r.

To the Hon. E. H. DURELL,
Judge U. S. D. C't.

Order of court amending decree of distribution.—July 24, 1865.

UNITED STATES.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

109 Considering the report of the U. S. commissioner, it is ordered that the motion made by the Merchants' Mutual Insurance Company on 22d instant be granted; that said company be relieved from the payment of all costs & taxes, and that the judgment of distribution of 29th ultimo be amended by increasing the amount on time allowed to said company from $1,590.28 to $2,942.93, and by reducing the balance accrueing to the U. S. from $3,659.72 to $2,307.07.—*Extract from minutes.*

Intervention of Mrs. Matilda Semmes.—Filed 1st August, 1865.

To the honorable the judge of the district court of the United States in & for the eastern district of Louisiana.

THE UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF THOMAS J. SEMMES. } No. 7643.

110 The petition of intervention of Mrs. Matilda Semmes respectfully shows:

1st. That she is a loyal citizen of the United States, residing at Washington City.

2d. That a bill of information has been filed in this honorable court by Rufus Waples, esq., dist. att'y of the United States, in a suit entitled The United States vs. 6 Lots of Ground, the property of Thomas J. Semmes, No. 7643 on the docket of suits in this hon. court, a full description of which is contained in said bill of information praying for a decree of confiscation of the same in favor of the U. S. for certain causes and reasons in said libel of information set forth, all of which

will more fully appear by reference to said bill of information and the proceedings had therein.

3rd. That she is a creditor of said Thomas J. Semmes in the
111 sum of three thousand seven hundred and fifty dollars with interest at the rate of 6 % p'r annum from 1st day of November, 1859, till 1st November, 1861, and 8 % thereafter, subject to a credit of $609.67 on the 4th November, 1861, for this, to wit: That petitioner is holder and owner for a bona-fide consideration of a promissory note, dated November 1st, 1859, payable by said Semmes (Th's J.) to his own order, & by him endorsed, for $3,750, (three thousand seven hundred and fifty dollars,) with interest at 6 % from date till maturity, & 8 % thereafter, payable 2 years after date, subject to the credit aforesaid, which said note is hereto annexed and made part hereof.

4th. That said note was given by said Semmes as part of the consideration of a building contract with Jamison and McIntosh, builders and architects in this city, for the construction of the buildings & improvements now on the property libelled herein, which contract was
112 passed before James W. Breedlove, notary public, on the 3rd August, 1858, and was duly recorded in the office of the recorder of mortgages in this city on the 6th day of August, 1858; that the property covered by said contract, and subject to a special lien & privilege in her favor, has been sold as forfeited to the Government of the U. S. and subject to confiscation, and that the proceeds of the sale are still under the control of this hon'ble court.

5th. Petitioner shows that, by reason of the premises, she has a lien and special privilege upon the property libelled herein, which could not be impaired by any act done or omitted to be done by said Th's J. Semmes, and that the right of this intervenor in and upon said property cannot be affected thereby.

Wherefore petitioner prays leave to file this her petition of in-
113 tervention and interpleader, and that the same may be notified to Rufus Waples, esq., district attorney of the U. S., or any other party in interest, and after due proceedings had a decree may be rendered in her favor, recognizing her right to be paid by privilege and preference out of the proceeds of the property libelled herein before the payment of any other claims or demands on the part of the United States, or of any person or persons whatever.

And petitioner prays for all such other and further aid, relief, and remedy as the nature of the case may require and the law will permit, and she will ever pray.

(Signed) J. N. LEA,
Proctor for Petitioner.

P. WARFIELD SEMMES, being duly sworn, deposes that he is the agent of Mrs. Matilda Semmes, the intervenor in these proceedings; that
114 he is duly authorized to make this claim and petition of intervention.

That all the allegations contained in this petition of intervention are true.

That no one else has any interest in the claim and demand therein set forth but said Matilda Semmes, and that she is the sole owner thereof, and that said Matilda Semmes resides out of the State of Louisiana and is now absent from the State.

(Signed) P. WARFIELD SEMMES.

Sworn to & subscribed before me this 1st Aug., 1865.

(Signed) K. LOEW, *D'y Clerk.*

Order.

Let the petitioner be authorized to intervene in this suit.
Aug. 1, 1865.
(Signed) E. H. DURELL, *Judge.*

115 *Promissory note filed with intervention of Mrs. M. Semmes.*

$3,750.00.] NEW ORLEANS, *November* 1, 1859.

Two years after date I promise to pay to the order of myself thirty-seven hundred and fifty dollars, value received, with interest at the rate of 6 % per annum from date until maturity, and if not then paid 8 % until final payment.
(Signed) TH'S J. SEMMES.

(Written across the face:)
Ne varietur. In conformity with building contract passed before me this 3rd August, 1858.
New Orleans, Dec'r 1st, 1859.
(Signed) J. WOOD BREEDLOVE,
Not. Pub.

(Endorsed:) Pay Mrs. Matilda Semmes.
(Signed) TH'S J. SEMMES.

Nov'r 4th, 1861. Credit on this note: Paid this day $609.17; the balance is due my mother.
(Signed) T. J. SEMMES.

Building contract filed with intervention of Mrs. M. Semmes.

STATE OF LOUISIANA,
City of New Orleans:

116 Be it known that, on this day before me, James Wood Breedlove, a notary public in and for the parish of Orleans, City of New Orleans, and State of Louisiana aforesaid, duly commissioned and qualified, personall' came and appeared Samuel Jamison, one of the members of the firm of Jamison & McIntosh of this city, builders partys hereto of the first part, and with him also came & appeared Thomas J. Semmes, also of this city, party hereto of the other part, which said appearers declared that they had contracted, and agreed, and by these presents mutually contract, agree, and bind themselves, the one party to the other party as follows, to wit:

The said Jamison & McIntosh hereby agree & bind themselves to provide all the necessary materials, and to erect or cause to be erected and completely finish' a two story and attic brick (building) dwelling-
117 house, on the property of the said Thomas J. Semmes, situate in the 1st district of this city, composed of lots 16 & 17, half of lot 18, and half of lots 14 & 15, on a plan drawn by B. F. Nichols, architect, on the 31st May, 1853, and deposit as plan No. 203, in the office of T. O. Stark, notary in this city, the whole forming the corner of Annunciation & Edward streets, & measuring 60 feet front on Annunciation street by one hundred & fifty-five feet 8 inches in depth, in strict accordance with the plans and designs made by W. A. Freret, architect, and in conformity with the specifications hereby annexed and made part of

this contract, which said plans, designs, and specifications have been duly signed by the said parties, and countersigned by me said notary.

The said parties of the first part hereby bind and obligate themselves to remove, free of expense to the said party of the second part,
118 the shanties now on said lots, and when the house is completed to remove all the rubbish resulting from the building thereof.

The house is to be at the risk of the builders until completed and delivered up to the owner for occupation in pursuance of this contract, so that if destroyed before completion and possession thereof given to the owner, the entire loss is to fall upon the builder; and the house is to be rebuilt by them and delivered to said Thomas J. Semmes within one year from its destruction.

The said party of the first part are to commence the building in the month of October, 1858, and proceed to construct it in pursuance of the said plans, drawings, and specifications, in the manner therein specified & described on or before the 1st day of October, 1859, and on or before that day to deliver up the house complete for occupation to the said party of the second part.

119 Nothing is to be charged as extra unless the work claimed as extra and the price thereof are agreed to in writing by the said centracting parties.

In consideration of all which, the said Thomas J. Semmes hereby binds himself, and his heirs, to pay unto the said Jamison & McIntosh the sum of fifteen thousand dollars, in the manner following, to wit: $2,000 when the entire foundations are laid; $2,000 in month of March, 1859; $2,000 in the month of August, 1859; $1,500 on the 1st of October, 1859.

And in full payment of the balance the said Thomas J. Semmes hereby binds himself to furnish his two several promissory notes for the sum of $3,750 each, to his order and by himself endorsed, dated on the 1st day of October, 1859, or on the day when said buildings are completely finished and the keys delivered up, and made payable 1 & 2 years after date, with 6 % interest from date.

120 This done and passed in my office in the city of New Orleans, in the presence of James S. Moody and Albert B. Breedlove, competent witnesses, who hereunto sign their names, together with said parties, and me notary, on the 3d day of August, 1858.

(Original signed) TH'S J. SEMMES.
JAMISON & McINTOSH.
JAMES S. MOODY.
J. WOOD BREE'LOVE,
Notary Public.

I, Ernest Eude, a notary public, duly commissioned and qualified in & for the parish of Orleans, residing in the city of New Orleans, do hereby certify the foregoing to be a true copy of the original act on file in the records of James Wood Breedlove, late a notary public in this city, which are in my possession as custodian thereof.

New Orleans, July 28th, A. D. 1865.

[SEAL.] (Signed) E. EUDE,
Notary Public, General Custodian of all Notarial Records of Persons out of Office.

[Stamp.]

Mortgage certificate.

I, the undersigned recorder of mortgages for the parish and city of

New Orleans, certify that the within building contract has been duly recorded in my office, in b. 72, fo. 47, under date of the 6th August, 1858.
New Orleans, July 31st, 1865.
(Signed) CH'S E. LENES, *D'y Rec.*

Order: Cause fixed.—January 16th, 1866.

U. S.
vs.
6 LOTS OF GROUND, THE PROPERTY OF T. J. Semmes. } 7643.

On motion of Jno. K. Goodloe, U. S. att'y, ordered that this cause, on the intervention, be assigned for trial on Monday, 5th Feb'ry, 1866, at 11 a. m., and that the party interested be notified thereof.

122 *Notice and service.*

NOTICE.

U. S.
vs.
PROPERTY OF TH'S J. SEMMES. } 7643.

To J. N. LEA, Esq.:
You are hereby notified that the above cause has been assigned for trial on Monday, 5th February, 1866, at 11 a. m.
By order of court.
K. LOEW, *D'y Clk.*

NEW ORLEANS, *January* 16, 1866.

Service.

Received January 17th, 1866, and on the 20th same month & year, served a copy of the within notice on J. N. Lea, esq., personally.
(Signed) M. EGAN,
D'y U. S. Marshal.

NEW ORLEANS, *Jan'ry* 22, 1866.

Hearing and judgment, favor Matilda Semmes, February 5th, 1866.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF THOMAS J. Semmes. } 7643.

123 This cause came up for trial in the intervention of Mrs. Matilda Semmes—dist. att'y for libellants; J. N. Lea, for intervenor—when, after hearing the pleadings & evidence—
It is ordered, adjudged and decreed, that there be judgment in favor of said Mrs. Matilda Semmes, for the sum of three thousand seven hunhundred & fifty dollars, with 6 % interest from 1st November, 1859, to 1st November, 1861, and 8 % thereafter till paid, subject to a credit of 609.17, paid 4th November, 1861, with a lien and privilege on the balance of the proceeds arising from the sale of the defendant's property.
It is further ordered and decreed, that the judgment of distribution of

the 29th June, 1865, as well as the order modifying the same, under date July 24th, 1865, in so far as it is therein decreed that the balance
124 of $2,307.07 be paid into the Treasury of the United States, be amended, and that the said balance, less $18 costs, created by the intervenor, be paid over to said Mrs. Matilda Semmes, in part satisfaction of her claim against the defendant, as soon as the note for $5,250 shall have been paid.

Judgment rendered Feb'ry 5, 1866.
Judgment signed Feb'ry 9, 1866.
(Signed) E. H. DURELL, *Judge.*

Note of evidence, Feb'ry 5th, 1866.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

Mrs. Matilda Semmes offered in evidence the record and proceedings herein, also note and building contract on file, A & B, copied at page 115 & 116.

125 *Rule by Th's J. Semmes, to set aside default and to file his claim.—March 4th 1868.*

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

On motion of Sullivan, Billings and Hughes, proctors for Th's J. Semmes, and upon suggesting to the court, that there was a decree of condemnation pronounced herein on the 5th day of April, 1865, which decree was on the 31st day of May, 1865, re-opened, and that a portion of the property libelled herein has never been condemned by any subsequent decree, to which property said Th's J. Semmes, is desirous of filing a claim.

It is ordered that Samuel H. Torry, esq., U. S. dis't att'y, show cause on the 14th day of March, 1868, at 11 a. m., why the default against said Tho's J. Semmes should not be set aside and he have leave to file his claim and answer herein.

126 *Extract from the minutes.*

Hearing of rule & order.—March 14th, 1868.

U. S.
vs.
PROPERTY OF T. J. SEMMES. } 7643.

The rule taken by the defendant on 4th inst., was called up for trial.—Sullivan, Billings & Hughes, & C. M. Conrad for pl't'f in rule; U. S. attorney, Torrey for def't in rule—when, upon a hearing of the rule it appearing that E. W. Burbank was the purchaser of all the property libelled herein, except that claimed by Isaac Bloom:

It is ordered that the further hearing of the rule be continued until the 26th day of March, 1868, at 11 a. m., and that the said E. W. Burbank be served with a copy of the rule & of this order, and made party

to these proceedings, and that he have 10 days' notice of this adjourned hearing.

127 *Service.*

Received, March 16, 1866, by the U. S. marshal, and on same day served copy of within rule and order on Sam'l H. Torrey, U. S. dist. att'y named herein, personally at his office in the custom-house of this city.

(Signed) A. FIELD,
U. S. Marshal.

NEW ORLEANS, *March* 17, 1868.

Continuance of rule.—March 26th, 1868.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

On motion of Billings & Hughes, it is ordered that the rule herein taken on 4th inst., which on 14th inst. was ordered to be fixed for trial on 26th March, 1868, and served on E. W. Burbank, the purchaser of the property, be continued and adjourned to Saturday, 11th April, 1868. at 11 a. m., and that a copy of this order be servd on said Bur-
128 bank, together with copy of the original rule and the order of 4th March, 1868.

Extract from minutes of 26th March, 1868.

Service on Burbank.

On the 27th day of March, 1868, the marshal, served copy of rule of 4th March, and of the order of 14th March, and of 26th March, 1868, on E. W. Burbank, as appears from the following return endorsed on the papers.

Return of service of rules.

Received, March 27th, 1868, by the U. S. marshal, and on same day of March, 1868, served copy of the within rule on E. W. Burbank herein personally at office 71 Tchoupitoulas street in this city.

NEW ORLEANS, *March* 27, 1868.

S. W. REED,
D'y U. S. Marshal.

129 *Peremptory exception of E. W. Burbank.—Filed April 11th, 1868.*

UNITED STATES
vs.
SIX (6) LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

District court of the U. S., for the district of Louisiana.

And now to the rule taken in this cause on the 12th March, 1868, and to the order of this court of the 14th March, 1868, making E. W. Burbank a party to said rule & proceedings, comes said E. W. Burbank by the undersigned, his counsel, and to the said rule & proceedings files this his peremptory exception, to wit:

That the rights of respondent, as purchaser of the property libelled and condemned and sold in the above-entitled & numbered cause, as shown by the judgment of condemnation of the 5th of April, 1865, and the writ of venditioni exponas of the 11 April, 1865, and the marshal's deed of 15 June, 1865, herewith made part of this exception, cannot be questioned in the form herein by said rule and proceedings attempted.

Wherefore his right to answer over to the said rule and proceedings in case this his exception should be overruled. Respondents prays that said rule and proceedings be dismissed so far as in any manner affecting the rights of respondent to said property.

(Signed) FELLOWS & MILLS, *Att'ys.*

Exception of the U. S. att'y.—Filed April 11th, 1868.

U. S.
vs. } 7643.
THE PROPERTY OF T. J. SEMMES.

The exception of the United States, libellants herein, to the rule of Th's J. Semmes, shows that said Semmes is not, and has not been, a party to the proceedings, & cannot be heard; that the time of the monition has long ago expired and the proceedings closed.

(Signed) SAM. H. TORREY,
U. S. Att'y.

Minute of evidence on trial of rule.—Filed April 11, 1868.

U. S.
vs. } 7643.
6 LOTS OF GROUND, PROPERTY OF TH'S J. SEMMES.

E. W. Burbank offered in evidence the marshal's deed, the judgment of condemnation, the writ of venditioni exponas.

He has filed a peremptory exception. U. S. att'y files exception also.

Marshal's deed.—Offered by Burbank April 11, 1868.

UNITED STATES OF AMERICA,
Eastern District of Louisiana, City of New Orleans:

Whereas I, Cuthbert Bullitt, marshal of the United States, for the eastern district of Louisiana, under and by virtue of a writ of venditioni exponas to me directed by the honorable the district court of the U. S. for the district aforesaid, in the suit entitled United States *vs.* Six Lots of Ground, the property of Tho's J. Semmes, No. 7643, of the docket of said court, did expose at public sale, according to law, & after all the (legal) previous legal requisites had been fulfilled and complied with, & after giving 30 days' notice of said sale in the True Delta, one of the daily newspapers printed & published in the city of New Orleans, viz, on the 13th & 26th April, 9, 18, 31 May, & 13 June, 1865, the following described property, to wit:

A certain lot of ground situate in the 1st district in the square bounded by Annunciation, St. Thomas, Edward & Benjamin streets, & designated by the No. 14, on a plan drawn by B. F. Nichols, architect, & measuring 22 feet 10 inches three lines front on Edward street, by 17 feet in width at the rear, 121 feet 7 inches & 3 lines in depth on divi-

sion line of lot No. 13 & 120 feet 11 inches & 7 lines on the line
133 dividing it from lot No. 15;

A certain piece or portion of ground situate in the 1st district of said city in the square bounded by St. Thomas, Annunciation, Edward, and Benjamin streets; said portion of ground measures 12 feet front on Annunciation st. by 110 feet deep between parallel lines, which portion of ground makes part of lot No. 18, as per plan by B. F. Nichols, architect, and which portion of ground & bounded on one side by lot No. 17, on said plan, on the other side by the remaining portion of lot No. 18;

Three certain lots of ground situate in the 1st district, in square bounded by St. Thomas, Annunciation, Edward, & Benjamin streets, designated as lots Nos. 15, 16, & 17, on a plan by B. F. Nichols, dated 31 May, 1853: No. 15 measures 22 f't 10 inches 3 lines front on Edward street, 17 feet in width in the rear, 120 feet 11 inches 7 lines deep
134 on the line dividing from lot No. 14; lots 16 & 17 measures each 24 feet front on Annunciation street, by 110 feet deep between parallel lines; lot No 16 forms the corner of Edward and Annunciation street; on Tuesday the 13th day of June, 1865, in the year 1865, at the hour of 12 o'clock, meridian, at the Merchants' & Auctioneers Exchange, No. 18 Royal street in this city, when after making due proclamation of said sale, & duly crying the said property and appurtenances, the same were adjudicated to Edward W. Burbank, he being the last and highest bidder thereon, for the price & sum of ten thousand five hundred dollars, at the time of adjudication, which said sum I hereby acknowledge to have received in the following manner, viz:

His promissory note dated the 13th June instant, for the sum of $5,250, payable one year from its date to the order of the clerk of the U. S. dist. court; to secure the payment of which note special mortgage is hereby retained in the property herein conveyed and above
135 described, and the sum of $5,250 in ready current money of the United States of America.

And it appears from a duly certified copy from the records in the office of the recorder of mortgages for the parish of Orleans, which certificate is annexed to the writ of venditioni exponas, under the authority of which the above described property has been sold, that there are none other than the following mortgages recorded against the above-described property, viz:

1. (Book 73, fo. 47.) The one resulting from the inscription of a building contract, by act before J. W. Breedlove, notary, the 3d August, 1858, entered into by said Semmes, & Jamison & McIntosh, builders, by which said Semmes bound himself to pay unto said builders the sum of $15,000, they binding themselves to erect a dwelling-house, &c., on the portion having 60 feet on Annunciation st. by 155 feet 8 inches on Edward street.

136 2. (B. 74, fo. 658.) The one he granted on a portion of ground forming the whole of lots Nos. 16 & 17, and parts of 18, 14, & 13, firstly, secondly, & thirdly described, in favor of the Merchants' Mutual Insurance Co., to secure payment of $6,000 & interest as per act before said Bree'love, notary public, the 3d March, 1860.

3. (B. p. 1, fo. 370.) The privilege in favor of the 2d draining district.

Now, therefore, know all men by these presents that I, the U. S. marshal aforesaid, in consideration of the premises and by virtue of the law in such case made and provided & under the authority of the acts of Congress of 6th Aug., 1861, the 17th July, 1862, & 3d March, 1863, in relation to confiscations, do hereby sell, transfer, assign, & set over unto the said Edward W. Burbank, as aforesaid, his heirs, administra-

tors, executors & assigns, all & singular the above-described property, with all the buildings & improvements thereon, rights, ways, privi-
137 leges, hereditaments and appurtenances to the same belonging and in any wise appertaining, to have & to hold the above described property, with all the buildings and improvements thereon, rights, ways, &c., as aforesaid, unto the said Edward W. Burbank, his heirs & assigns, as aforesaid, to his and their proper use, benefit, & behoof forever.

In testimony whereof I grant these presents under my signature as U. S. marshal aforesaid, in the said city of New Orleans, on this 15th day of June, in the year of our Lord, 1865, and of the Independence of the United States of America the 89th.

(Signed) CUTHBERT BULLITT,
U. S. Marshal.

Executed in presence of—
C. BOISBLANC.
W. J. H. PREIS.

[$10. 50 revenue stamp affixed & cancelled.]

U. S. dist. court, east'n dist. of La., city of New Orleans.

I hereby certify that the foregoing deed of sale has this day
138 been duly recorded in this office in Sales Book "B," fo. 247 & 248.
Clerk's Office, June 22d, 1865.

[SEAL.] (Signed) CH'S CLAIBORNE, *Cl'k.*

I, register of conveyances, certify that the present act was this day recorded in this office in Book 91, fo. 59.

New Orleans, 12 February, 1866.

(Signed) P. SAURE, *Register.*

Certificate from mortgage office annexed to deed.

OFFICE OF MORTGAGES.

The undersigned recorder of mortgages for the city of New Orleans, parish of Orleans, State of Louisiana, certifies that in the records of his office the following mortgages, standing in the name of Thos. J. Semmes, and recorded against the property described in the printed slip hereto annexed—[the printed slip is illegible & cannot be copied,] viz:
139 (B. 72, fo. 47.) The one resulting from the inscription of a building contract by act before J. W. Breedlove, notary, on the 3d Aug., 1858, entered into by said Semmes & Jameson and McIntosh, builders, by which said Semmes bound himself to pay unto said builders the sum of $15,000, they binding themselves to erect a dwelling-house on the portion of ground having 60 feet front on Annunciation street by 155.8 on Edward street.

(B. 74, fo. 658.) The one he granted on a portion of ground forming the whole of lot No. 16, & 17, & part of lots 18, 14, & 15, 1stly, 2dly, & 3rdly described, in favor of the Merchants' Mutual Insurance Company, to secure $6,000 & interest, as per act before said Breedlove, notary, on the 3d March, 1860, have been cancelled and annulled by virtue of an order of the U. S. district court dated the 18th of March last, and on file in his office, and in conformity to a certificate of C. Bullitt,
140 United States marshal of said court, issued in pursuance of said order, dated and filed this day.

New Orleans, June 16, 1865.

(Signed) CH'S E. LENES,
D'y Recorder.

The decree of condemnation and the venditioni exponsas offered in evidence by Burbank are already copied at pages 61 & 63.

Hearing of rule, April 11th, '68.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } 7643.

The rule taken by Th's J. Semmes, on 4th March last, came up for trial—Sullivan, Billings & Hughes & C. M. Conrad, for pl'ff in rule; Fellows & Mills for E. W. Burbank; S. H. Torrey, U. S. att'y for the Government; Rufus Waples, late district attorney, appearing and taking part in the proceedings—and after hearing argument on the exceptions & the rule, the court took time to advise.

141 *Order.—Rule absolute.—Ap'l* 15, 1868.

U. S.
vs.
6 LOTS OF GROUND, PROPERTY OF TH'S J. SEMMES. } 7643.

For reasons orally assigned by the court, it is ordered and decreed that the exceptions filed by the district attorney and E. W. Burbank be overruled.

That the rule taken by T. J. Semmes, on 4th March last, be made absolute; that the default entered against said Semmes on 5th April, 1865, be set aside, and that he have leave to file his claim & answer herein.—*Extract from the minutes.*

Claim of T. J. Semmes.—Filed June 19, 1868.

District court of the United States for the district of Louisiana.

THE UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF THOMAS J. Semmes. } No. 7643.

142 To the honorable Edward H. Durell, judge of the district court of the U. S. for the dist. of Louisiana:

And now comes into this hon. court Thomas J. Semmes, and claims the following-described property libelled herein, namely:

The property mentioned in the libel herein in the square bounded by Annunciation, S't Thomas, Benjamin, & Edward or Melpomene streets, being lots Nos. 14, 16, & 17, and part of lot 18, on plan No. 203, deposited in T. O. Stark's office, notary public, drawn by F. B. Nichols, architect, & dated May 31st, 1853, together with the buildings and improvements thereon, and states that he is the true & lawful owner thereof.

Wherefore the respondent prays this hon'l court would be pleased to pronounce against the libel aforesaid, and condemn the libellants in costs, and otherwise right & justice administer in the premises.

(Signed) TH'S J. SEMMES.

143 Sworn to March 4th, 1868, before me.

K. LOEW,
U. S. Comm'r.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Proctors for Claimant.

Answer of Th's J. Semmes.—Filed June 19th, 1868.

The United States district court, district of Louisiana.

UNITED STATES
vs. } 7643.
6 LOTS OF GROUND, PROPERTY OF TH'S J. SEMMES.

To the honorable E. H. Durell, judge of the district court of the U. S. for the dist. of Louisiana:

The answer of Thomas J. Semmes, of New Orleans, in the State of Louisiana, intervening for his interest, by leave of the court first had and obtained, in the following-described property, to wit, the prop-
144 erty mentioned in the libel herein in the square bounded by Annunciation, S't Thomas, Benjamin or Thalia, Edward or Melpomene streets, in the first district of the city of New Orleans, being lots numbered fourteen, (14,) sixteen, (16,) seventeen, (17,) & part of lot numbered 18, (eighteen,) on plan No. 203 (two hundred & three) deposited in T. O. Stark's office, notary public, drawn by B. F. Nichols, architect, & dated 31st May, 1853, together with all and singular the buildings and improvements thereon, answers and alleges as follows:

1st. That the allegations in said libel contained are insufficient in law to warrant or authorize a decree of condemnation against the property aforesaid.

2d. That the President of the United States, as this respondent is informed, and therefore avers, never authorized the seizure of the property aforesaid.

145 3rd. That, since the filing of said bill of libel, this respondent has been specially pardoned by the President of the United States for all offences by him committed arising from participation, direct or indirect, in the late rebellion against the United States, and has duly accepted said pardon and complied with all the conditions therein contained; and he pleads said pardon in bar of these proceedings, without admitting the truth of the allegations contained in the libel; and he makes due perfect of his said pardon, and files the same herewith.

4th. That since the filing of said libel the President of the United States, by virtue of his amnesty proclamation issued Sept. 7th, 1867, has granted pardon and amnesty to all persons for offenses by them committed arising from participation, direct or indirect or implied, in the late rebellion against the United States.

146 And this respondent, not being one of the excepted persons, has taken the oath and complied with all the requisites of said proclamation, said oath being hereto annexed as part hereof; and, without admitting the truth of the allegations contained in said libel, he pleads said amnesty proclamation in bar of these proceedings.

Wherefore this respondent prays that this honorable court will be pleased to pronounce against the libel aforesaid, decree restoration of the property aforesaid, and otherwise right and justice administer in the premises.

(Signed) TH'S J. SEMMES.

Sworn to & subscribed before me this 19 June, 1868.

(Signed) K. LOEW,
U. S. Comm'r.

(Signed)
SULLIVAN, BILLINGS & HUGHES,
of Counsel.

147 *Pardon.—Filed June* 19, 1868.

Andrew Johnson, President of the United States of America, to all to whom these presents shall come, greeting:

Whereas Thomas J. Semmes, of Louisiana, by taking part in the late rebellion against the Government of the United States, has made himself liable to heavy pains and penalties;

And whereas the circumstances of his case render him a proper subject of executive clemency:

Now, therefore, be it known that I, Andrew Johnson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant to the said Thomas J. Semmes a full pardon and amnesty for all
148 offences by him committed arising from participation, direct or indirect, in the said rebellion, conditioned as follows:

1st. This pardon to be of no effect until the said Thomas J. Semmes shall take the oath prescribed in the proclamation of the President dated May 29, 1865.

2d. To be void and of no effect if the said Thomas J. Semmes shall hereafter at any time acquire any property whatever in slaves or make use of slave labor.

3rd. That the said Thomas J. Semmes first pay all costs which may have accrued in any proceedings instituted or pending against his person or property before the date of acceptance of this warrant.

4th. That the said Thomas J. Semmes shall not by virtue of this warrant claim any property or the proceeds of any property that has been sold by the order, judgment, or decree of a court under the con-
149 fiscation laws of the United States.

5th. That the said Thomas J. Semmes shall notify the Secretary of State in writing that he has received and accepted the foregoing pardon.

In testimony whereof I have hereunto signed my name and caused the seal of the United States to be affixed.

Done at the city of Washington this 19th day of October, A. D. 1865, and of the Independence of the United States the 90th.

[SEAL.] (Signed) ANDREW JOHNSON.

By the President:

W. HUNTER, *Acting Secretary of State.*

Oath of T. J. Semmes.—Filed with answer June 19, 1868.

No. 13.

I do solemnly swear in the presence of Almighty God that I will henceforth faithfully support, protect, and defend the Constitu-
150 tion of the United States, and the union of States thereunder; and that I will in like manner abide by and faithfully support all laws and proclamations which have been made during the late rebellion with reference to the emancipation of slaves: So help me God.

(Signed) TH'S J. SEMMES.

Sworn to & subscribed before me this 9th day of April, A. D. 1868.

[SEAL.] (Signed) F. B. VINOT,

Dy Clerk U. S. Circuit Court, 5th Judicial Dist
& District of Louisiana.

[5-ct. stamp.]

Certificate from Secretary of State.—Filed June 19th, 1868.

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify that the document hereunto annexed is a true copy of the original on file in this Department.

151 In testimony whereof I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

Done at the city of Washington this 25th day of October, A. D. 1865, and of the Independence of the United States of America the 90th.

[SEAL.] (Signed) WILLIAM H. SEWARD.

Acceptance of pardon.

WASHINGTON, D. C., *October 25th*, 1865.

Honorable WILLIAM H. SEWARD,
Secretary of State:

SIR: I have the honor to acknowledge the receipt of the President's warrant of pardon, bearing date October 19, 1865, and hereby signify my acceptance of the same, with all the conditions therein specified.

152 I am, sir, your obedient servant,

(Signed) TH'S J. SEMMES.

Certificate of deposit of T. J. Semmes' oath.—Filed June 19, 1868.

UNITED STATES OF AMERICA,
Department of State:

To all to whom these presents shall come, greeting:

I certify that Thomas J. Semmes, of Louisiana, (State of,) has deposited in this Department his original oath, bearing date the 25th day of October, 1865, being in the form prescribed by the President's proclamation of May 29, 1865.

In testimony whereof I, William H. Seward, Secretary of State of the United States, have hereunto subscribed my name and caused the seal of the Department of State to be affixed.

153 Done at the city of Washington this 25th day of October, A. D. 1865, and of the Independence of the United States of America the 90th.

[SEAL.] (Signed) WILLIAM H. SEWARD.

Order fixing cause for trial.—June 19th, 1868.

UNITED STATES
vs. } 7643.
PROPERTY OF T. J. SEMMES.

On motion of Sullivan, Billings & Hughes, it is ordered that this case be fixed for trial on Saturday, 27 June inst., at 11 a. m., and that the dist. att'y and E. W. Burbank be notified thereof.

Notice.

UNITED STATES
vs.
THE PROPERTY OF T. J. SEMMES. } 7643.

To U. S. Att'y & E. W. Burbank, Esq's.:

You are hereby notified that the above cause has been assigned
154 for trial on Saturday, the 27th day of June, 1868, at 11 a. m.
By order of court.
(Signed) K. LOEW, *D'y Clerk.*
NEW ORLEANS, *June* 19, 1868.

Service.

Received June 20th, 1868, by the U. S. marshal, and on the same day of June, 1868, served copy of within notice on U. S. att'y, named herein, in hands of John Fahy, clerk at office custom-house in this city, and on same day served copy of same on E. W. Burbank, named herein, personally at office 71 Tchoupitoulas street in this city.
(Signed) S. M. REED,
D'y U. S. Marshal.
NEW ORLEANS, *June 22d*, 1868.

Minute of evidence taken on trial.—June 27th, 1868.

UNITED STATES
vs.
T. J. SEMMES. } 7643.

155 Defendant offered in evidence the President's pardon, and the certificate of the Secretary of State showing his acceptance of the same.
Also his amnesty oath under the President's proclamation of 7th September, 1867.
All the above documents are copied, with the defendant's claim and answer, at pages 141 to 151.

Hearing and decree of restitution.—June 27, 1868.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 7643.

This cause came up for trial—U. S. att'y for libellants; Sullivan, Billings & Hughs for defendants—when, after hearing the pleadings and the evidence, the defendant having received the President's pardon, which he has accepted with all the conditions therein specified, as appears from the certificate of the Secretary of State on file:
156 It is ordered, adjudged, and decreed that the libel be dismissed and the libelled property restored to the defendant & claimant upon the payment of all costs.
Judgment rendered June 27, 1868.
Judgment signed July 2d, 1868.
(Signed) E. H. DURELL, *Judge.*

Petition for writ of error.—Filed July 3rd, 1868.

United States district court for the district of Louisiana.

UNITED STATES OF AMERICA
vs.
6 LOTS OF GROUND, PROPERTY OF TH'S J. Semmes. } No. 7643.

To the Hon. E. H. Durell, judge of the district court for the district of Louisiana:

Your petitioners, The United States of America, represented by Samuel H. Torrey, their attorney for the district of Louisiana, re-
157 spectfully represent that in the above-entitled cause, wherein your petitioners were the libellants of 6 lots of ground which were condemned to your petitioners, judgment was rendered and proceedings had subsequent to said condemnation, and on the 27th day of June, 1868, judgment was rendered restoring said property to Thomas J. Semmes;

That on the record and proceedings in said court subsequent to the condemnation and sale of said property, and also in the rendition of said judgment, rendered on 27th day of June, 1868, restoring said property to said Semmes, manifest errors have occurred to the great damage of your petitioners.

Wherefore your petitioners pray a writ of error in said cause, returnable to the next term of the circuit court of the United States for this district, with supersed'as: & as in duty bound your petitioners will ever pray.

(Signed) SAM. H. TORREY,
U. S. Att'y.

158 *Order granting writ.*

Let a writ of error be allowed in this case as prayed for, and according to law, returnable to the circuit court of the U. S. for the 5th circuit and district of Louisiana, on the 1st Monday of November next, the same to operate as a supersedeas.

July 3rd, 1868.

(Signed) E. H. DURELL, *Judge.*

Certificate of clerk.

District court of the United States of America, district of Louisiana.

I certify the foregoing 140 pages to contain and form a true, correct, and complete transcript of all the proceedings had, documents filed, and evidence adduced on the trial of the case of the United States vs. Six Lots of Ground, the property of Thos. J. Semmes, No. 7643, of the docket, with the exception of the act of mortgage withdrawn by the
159 Merchants' Mutual Insurance Company.

In testimony whereof I grant these presents under my signature and the seal of our court at New Orleans, this 1st day of Sept'r, A. D. 1868, and of the Independence of the U. S. the 93rd.

[SEAL.] K. LOEW, *D'y Clerk.*

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the district court of the United States in and for the district of Louisiana, greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you, or one of you, between the United States and Six Lots of Ground, property of T. J. Semmes, a manifest error hath happened to the great damage
160 of the said United States, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, together with this writ, so that you have the same at New Orleans, on the first Monday of December next, in the said circuit court, to be then and there held; that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable S. P. Chase, Chief Justice of the said Supreme Court of the United , this 9th of July, in the year of our
161 Lord one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) D. URBAN,
Clerk of the U. S. Cir. Court for Dist of La.

Citation in error.

United States district court, district of Louisiana.

UNITED STATES
vs. } No. 7843.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES.

The United States of America to Tho's J. Semmes, greeting:

You are hereby cited and admonished to be and appear before the circuit court of the United States for the 5th circuit and district of Louisiana, at its next term, to be holden in the city of New Orleans, State of Louisiana, to answer the writ of error taken by the United States in this cause, and that you show cause then and there, if any there be, why the judgment rendered against the said United States should not
162 be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable E. H. Durell, judge, this 9th July, in the year of our Lord 1868, and the 93rd of the American Independence.

(Signed) E. H. DURELL, *Judge.*

Service.

Received July 8th, 1868, by the U. S. marshal, and on 10th day of July, 1868, served copy of within citation of appeal on T. J. Semmes, claimant named herein, personally at office 75 Carondelet street in this city.

(Signed) S. W. REED,
Dep'y U. S. Marshal.

NEW ORLEANS, *July 13th*, 1868.

163 *Rule to dismiss writ of error.—Extract from the minutes, April 19th, 1869.*

UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.
November term, 1868.

NEW ORLEANS, *Monday, April 19th*, 1869.

Court met pursuant to adjournment. Present, Hon. E. H. Durell, district judge.

UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF TH'S J. Semmes. } No. 5669.

On motion of Rob't Mott, proctor of the claimant, Th's J. Semmes, it is ordered that the U. S., through P. H. Morgan, esq'r, the att'y for this district, do show cause on Saturday next, the 24th inst., at 11 a. m., why the writ of error taken in this case shall not be dismissed on the ground
164 that the said attorney has received instructions to that effect from the hon. the Attorney-General of the U. S., under the several dates of 26 December, 1868, 10th March, 1869, and 2d April, 1869.

Order.

Rule continued indefinitely.—*Extract from the minutes, April 24th*, 1869.

The rule taken by T. J. Semmes on 19th inst. came up—Rob't Mott for plaintiff in rule; E. C. Billings for P. H. Morgan, U. S. att'y—when, after hearing argument, ordered that the rule be continued indefinitely.

Rule and grounds to dismiss writ of error, and filed May 28th, 1869.

Circuit court of the United States for the district of Louisiana.

THE UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF THO'S J. Semmes. } No. 5669.

On motion of Robert Mott, proctor of Thomas J. Semmes, the
165 claimant, it is ordered that P. H. Morgan, esq., United States attorney, show cause on , at 11 o'clock a. m., why the writ of error taken in this case shall not be dismissed on the grounds following, viz:

1st. Because no service was made of the writ of error, by lodging a copy thereof in the clerk's office of the district court according to law.

2nd. Because the writ of error was made returnable on the 1st Monday of December, instead the 1st Monday of November.

3rd. That the writ of error was not returnable according to the citation, nor was the citation made returnable according to the writ of error.

4th. Because a writ of error is not the proper mode of revising the proceedings of the court below; the same should have been by appeal.

166 5th. Because part of the judgment sought to be revised is interlocutory and not final.

6th. Because the President of the United States, by proclamation of date 25th December, 1868, has dismissed all proceedings pending against the person or property engaged or in manner implicated in the late rebellion.

Order.—Rule taken 28th May, 1869, fixed.—Extract from minutes of April 26th, 1870.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF TH'S J. SEMMES. } No. 5669.

On motion of Rob't Mott, of counsel for T. J. Semmes, ordered that the motion to dismiss, made on 28th , 1869, be tried on the hearing of the cause on its merits.

Additional grounds for dismissal of writ of error.—Filed April 26, 1870.

UNITED STATES
vs.
SIX LOTS OF GROUND, PROPERTYOF TH'S J. SEMMES. } No. 5669.

167 Now comes Thomas J. Semmes, appellee, and moves to dismiss the writ of error filed herein on the grounds stated in the motion herein filed on 28th May, 1869, and also on the additional grounds:

1st. That the writ of error was not allowed on petition addressed to the circuit court, nor was it allowed by any proper order or authority, and is therefore a nullity.

2d. That the writ of error was not made returnable in conformity to the order allowing the same in the prayer for the same in the petition.

(Signed) SEMMES & MOTT,
Att'ys for Th's J. Semmes.

Assignment of errors.—Filed May 23d, 1870.

Circuit court of the United States, fifth circuit and district of Louisiana.

THE UNITED STATES OF AMERICA
vs.
168 SIX LOTS OF GROUND, PROPERTY OF T. J. SEMMES.

Of April term, in the year of our Lord one thousand eight hundred an seventy.

And now comes the said United States of America before the judges of the circuit court of United States, for the fifth circuit and district of Louisiana, at the city of New Orleans, by A. B. Lang, United States attorney, and says that, in the record and proceedings aforesaid there is manifest error in this, to wit, that the application and pleadings

of the said Thomas J. Semmes in said case, and the matter and things therein contained are not sufficient in law for said Thomas J. Semmes to have or maintain his aforesaid action thereof against the said United States; there is also error in this, to wit, that by the record aforesaid it appears that the judgment aforesaid was given for the said
169 Thomas J. Semmes against the United States of America, whereas by the law of the land the said judgment ought to have been given for the said United States against the said Thomas J. Semmes; and the said United States prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by reason of the said judgment, &c.

(Signed) A. B. LANG,
U. S. Att'y.

Hearing and submission of cause.—Extract from the minutes of June 6th, 1870.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 5669.

This cause came on to be heard on the transcript of the record from the district court of the U. S. for the district of La.—A. B. Long, U. S. att'y, & W. R. Mills for pl'ffs in error; Robert Mott for defendant
170 in error—and, after hearing argument, the court took time to advise.

Order.—Decision withheld.—Extract from the minutes of June 11, 1870.

UNITED STATES
vs.
6 LOTS OF GROUND, PROPERTY OF T. J. SEMMES. } No. 5669.

In this case, for reasons assigned, the court withholds its decision until the next term of the Supreme Court of the United States.

Decree.—Extract from the decree docket of June 20, 1872.

Circuit court of the United States, fifth circuit and district of Louisiana.
April term, 1872.

NEW ORLEANS, *Thursday, June 20th*, 1872.

Court met pursuant to adjournment. Present, Hon. J. P. Bradley, associate justice Supreme Court.

171 UNITED STATES
vs.
6 LOTS OF GROUND, THE PROPERTY OF T. J. SEMMES. } No. 5669. In error at the suit of the United States.

For reasons assigned in the written opinion of the court, this day delivered and on file, it is ordered that the decree made by the district

court on the 27th June, 1868, restoring the libelled property to the defendant, be avoided and reversed; and it is now ordered, adjudged, and decreed by this court the decree of condemnation originally pronounced by the district court stand and remain in full force and effect, and that the sale made by virtue thereof do stand confirmed.

Decree rendered June 20th, 1872.

Decree signed June 20th, 1872.

(Signed) JOSEPH P. BRADLEY,
Associate Justice Sup. Ct U. S.

172 *Petition and order for writ of error.—Filed March* 1, 1873.

Circuit court of the United States, fifth circuit & district of Louisiana.

THE UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF TH'S J. Semmes, claimant. } No. 5669.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

The petition of Thomas J. Semmes with respect represents, that on the 20th June, 1872, in the above-entitled cause, numbered as aforesaid, a judgment has been rendered against him by this honorable court in favor of the United States, which was signed on the said 20th day of June, 1872. Your petitioner considers that manifest error hath happened to the great injury and damage of petitioner; and feeling
173 aggrieved by said judgment, he desires to prosecute a writ of error from the aforesaid judgment before the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him from the judgment heretofore referred to, returnable before the Supreme Court of the United States, in accordance with law, upon petitioner's giving bond in the sum of two hundred and fifty dollars, conditioned according to law, with Francis B. Lee as surety.

(Signed) ROBERT MOTT,
Att'y for Pet'r.

Order.

A writ of error is allowed in this case as prayed for, and according to law, returnable to the Supreme Court of the U. S. the 2d Monday of Octo., 1873, the plaintiff in error giving bond for costs in the sum of $250, with surety according to law.

March 1, 1873.

(Signed) W. B. WOODS, *Judge.*

174 *Bond for writ of error.—Filed March* 1, 1873.

Know all men by these presents that we, Thomas J. Semmes, as principal, and Francis B. Lee, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars, to be paid to the said United States of America, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, execu-

tors, and administrators, jointly and severally by these presents, sealed with our seals and dated this day of March, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court wherein the United States of America were plaintiffs, and a final judgment was rendered against the said Thomas J. Semmes, claimant of six lots of ground, the property
175 of said Thomas J. Semmes, defendant, and the said Thomas J. Semmes having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing the United States of America to be and appear at a Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such, that if the said Thomas J. Semmes shall prosecute his writ to effect, and answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) THOMAS J. SEMMES. [SEAL.]
" FRANCIS B. LEE. [SEAL.]

Sealed and delivered in the presence of—
Approved:
(Signed) W. B. WOODS, *Judge.*

176 *Opinion.—Filed June 20th*, 1872.

Circuit court of the United States, fifth circuit and district of Louisiana.

UNITED STATES
vs.
SIX LOTS OF GROUND, THE PROPERTY OF Thomas J. Semmes. } On error.

This is a writ sued out by the United States to reverse a judgment of the district court, rendered June 27th, 1868, dismissing the libel of information, and restoring to the claimant, Thomas J. Semmes, the property seized which had been sold under a decree of confiscation rendered in the case in April, 1865.

A preliminary motion is made to dismiss the writ of error. This must be denied. (1.) The first ground assigned is that the district attorney had been instructed by the Attorney-General to dismiss it. This, if proved, is no reason for dismissing the writ.
177 The district attorney represents the United States, and the correspondence between him and the Attorney-General is confidential in its nature and cannot be cited by third persons. But I see no proof of the fact. (2.) The second ground is, that a writ of error does not lie in the case. This has been settled to the contrary by the Supreme Court. (3.) The third ground is, that the writ of error being sued out in July, 1868, was made returnable on the first Monday of December then next; whereas the next term of the court was to commence on the first Monday of November, and the citation was returnable generally to the next term. The error in the writ seems to have originated from using a blank printed writ intended for removing judgments to the Supreme Court, and is evidently a mere clerical oversight.

A recent statute authorizes an amendment of the test and return of writs of error, and would probably authorize the amendment of
178 this. But the copy of the writ lodged with the clerk of the district court for the defendant in error is correct, having the return-day on the first Monday of November; and the record was actually returned and filed in this court before the 1st Monday in November.

I think, therefore, that the defect is immaterial and is cured.

The error relied on by the Government for a reversal of the judgment is this: that a regular default was made in the case, and entered on the 8th day of September, 1863, and a decree of confiscation made upon due proof on the 5th of April, 1865, and that upon this decree a venditioni exponas issued on the 11th of April, 1865, under which the marshal regularly sold the property at auction on the 13th of June, 1865, and one Edward W. Burbank became the purchaser, and that the marshal executed a deed to said Burbank for the property; that the
179 claimant Semmes did not apply to have the judgment opened and the sale set aside until March 4th, 1868, nearly three years after the rendition of the judgment; that nevertheless the default was opened, and the claimant was allowed to file a claim and answer on the 15th of April, 1868; and that upon his pleading a pardon granted in October, 1865, and the proclamation of amnesty of September 7th, 1867, and showing that he had taken the requisite oaths and performed the conditions required by the pardon and amnesty, the district court adjudged that the libel of information be dismissed, and the libelled property restored to the claimant upon the payment of all costs.

It is contended on behalf of the Government that this last proceeding in 1868 is entirely erroneous and without authority.

The counsel for the defendant in error attaches some impor-
180 tance to the fact that the decree of confiscation had, by consent, been partially opened before and set aside as to one of the lots seized.

This took place before the sale by the marshal on the application of a man by the name of Bloom, who showed that he had long before purchased that lot from Semmes; but I do not regard this transaction as having the slightest effect on the decree, further than as it related to the lot claimed by Bloom.

The opening of the decree and the dismissal of the libel were expressly confined to that particular lot, and the decree remained in full force with regard to all the residue of the property.

And I do not perceive any error in the proceedings up to and including the decree of condemnation and sale, and if there had been error I do not think that the district court three years after the rendering of the decree could sit as a court of error upon its own decree
181 and reverse it; but the court has done more; it has not only reversed its decree, but has made a decree to restore the property to the claimant after its sale, under and by virtue of the decree.

It is a general rule that a judicial sale made by virtue of a judgment which the court had jurisdiction to render will stand through the judgment itself be afterwards reversed for error. In my judgment the district court had general authority, as at common law, thus to set aside its judgment regularly rendered, and the judicial sale made by virtue thereof. If it had authority so to do, it must have been derived from the particular circumstances of the case as affected by the pardon and amnesty pleaded by the defendant. Do such pardon and amnesty annul past transactions, so far as to invalidate the previous judicial confiscation and sale of the claimant's property? Such a proposition seems

182 to me utterly untenable on general principles, and, besides, the pardon itself, which was pleaded in this case, contained an express condition, that the defendant should not claim any property or proceeds of any property that had been sold by the order of the judgment or decree of a court under the confiscation laws of the United States.

This condition is a bar to the defendant's claim. It has been repeated' held that a pardon may be partial or subject to conditions. Of course the condition must be a lawful one.

As far as I can see, the condition in question is entirely free from any taint of illegality. W'ether it would have been binding on the defendant if he could have shown that the confiscation proceedings were illegal and void, it is not necessary to decide. They were legal and valid when they were taken.

The order of the district court opening the default, and the decree dismissing the information and restoring to the defendant in
183 error the property sold, must be reversed, and the original decree of confiscation and the proceedings thereon must stand confirmed.

184 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 183 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of The United States, plaintiff in error, vs. Six Lots of Ground, the property of Thomas J. Semmes, defendant in error, No. 5669 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 15th day of August, A. D. 1873.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward H. Durell, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 15th day of August, A. D. 1873.

E. H. DURELL, *Judge.*

185 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between The United States of America and Six Lots of Ground,

the property of Thomas J. Semmes, Thomas J. Semmes, claimant, No. 5669 on the docket thereof, a manifest error hath happened to the great damage of the said Thomas J. Semmes, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this first day of March, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 5669. Thomas J. Semmes, plaintiff in error, versus The United States of America, def'ts in error. Writ of error. Filed March 1, 1873. F. B. Vinot, d'y cl'k.

186 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana:

The President of the United States to The United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Thomas J. Semmes, claimant of six lots of ground, the property of Thomas J. Semmes, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Thos. J. Semmes, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this first day of March, in the year of our Lord one thousand eight hundred and seventy-three.

W. B. WOODS, *Judge.*

(Indorsed:) I. R. Beckwith, U. S. att'y. United States circuit
187 court. No. 5669. Thomas J. Semmes, claimant of six lots of ground, the property of Thos. J. Semmes, pl'ff in error, vs. The United States of America, def'ts in error. Citation.

Marshal's return.

Received, March 1, '73, by the U. S. marshal, and on the 5th day same month and year served a copy of the within citation in error on the United States of America, by delivering the same to I. R. Beckwith, U. S. attorney for the district of Louisiana, in person.

New Orleans, March 5th, 1873.

S. W. REED,
D'y U. S. Marshal.

On this fifth day of March, 1873, personally came and appeared before me, the subscriber, S. W. Reed, a deputy marshal for the district of Louisiana, who, being duly sworn, declared that, on this 5th day of March, 1873, he served a copy of the within citation on the United States of America, by handing the same to I. R. Beckwith, their attorney for the district of Louisiana, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 5th day of March, 1873.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 237. Thomas J. Semmes, claimant of six lots of ground, plaintiff in error, vs. The United States. Louisiana C. C. U. S. Filed 13th October, 1873.

Supreme Court of the United States.

THOMAS J. SEMMES, Claimant of Six Lots of Ground, Plaintiff in error,

vs.

THE UNITED STATES.

THOMAS J. SEMMES,
in propria persona.
ROBT. MOTT.
of Counsel.

Supreme Court of the United States.

THOMAS J. SEMMES, Claimant of Six Lots of Ground, Plaintiff in error,

vs.

THE UNITED STATES.

Proceedings instituted in the District Court of Louisiana on 7th August, 1863, under the confiscation act of 1862, against the property of plaintiff in error, resulted in a decree of condemnation on 5th April, 1865—p. 21.

On 11th April, the day after the decree was signed, a writ of venditioni exponas was issued, commanding the Marshal to sell the property condemned *on* 18*th May*, 1865, at 12 M.—pp. 21, 22.

The Marshal did not sell on *that day*, but of his own accord undertook to withdraw the property from sale, and re-advertised it for sale on 13th June, when E. W. Burbank became the purchaser. The reason assigned by the Marshal for not selling on the day specified in the venditioni exponas was, that

on the offering on that day, the price bid did not amount to two-thirds of the appraised value—p. 22.

The libel as well as the decree of condemnation embraced two lots of ground, which in fact were not the property of the plaintiff in error, but of one Bloom, who on 2d May, 1865, filed a petition, setting forth his right to the two lots in question, and stating they were improperly advertised by the Marshal for sale; he prayed the Court to open the decree, to allow him to assert his title—pp. 25 and 26.

On 29th May, 1865, the proctor for Bloom and the United States Attorney entered into the following agreement:

"It is agreed, that for the purpose of saving delay "and expenses, the decree of confiscation herein "entered, be opened for the purpose of submitting "the claim of Isaac Bloom, and the said claim be "submitted on the evidence on file."—p. 34.

On the same day, the Court rendered the following order:

"By written consent of counsel, the decree of "condemnation pronounced on 5th April, 1865, is "reöpened, for the purpose of submitting to the "Court the claim of Isaac Bloom to a portion of "the libelled property, and said claim is now sub-"mitted on the evidence on file."—p. 34.

On 31st May, 1865, judgment was rendered restoring to Bloom the lots claimed by him—p. 35.

On 4th March, 1868, the plaintiff in error, on suggesting that the decree of condemnation of the 5th April, 1865, had been opened, and that a portion of the property libelled had never been condemned by any subsequent decree, moved the Court to set aside the default against him, and for leave to file his claim and answer—p. 42.

On the hearing of the motion, the Court ordered Burbank, the purchaser of the property of the plaintiff in error, to be made a party—p. 42

Burbank filed an exception to the form of proceeding against him, but on the trial offered in evidence his deed from the Marshal, the decree of condemnation and the venditioni exponas—pp. 44 and 47.

On the 15th of April, 1868, the Court overruled the exceptions, set aside the default against Semmes, and granted him leave to file his claim and answer —p. 47.

Semmes filed his answer, alleging his ownership of the property, the insufficiency in law of the allegations contained in the libel, that the President never authorized the seizure of his property, that he had been specially pardoned by the President for participation in the rebellion, and that he was included in the general amnesty proclamation of September 7, 1867—p. 48.

The Court, on the 27th of June, 1868, rendered a

decree "that the libel be dismissed and the libelled "property restored to the defendant and claimant "upon the payment of all costs," p. 51.

The pardon offered in evidence contains the condition, that Semmes shall not, "by virtue of this "warrant, claim any property, or the proceeds of "any property, that has been sold by the order, "judgment or decree of a court under the confisca- "tion laws of the United States," p. 49.

The United States, by its attorney, on the 3d of July, 1868, filed a petition for a writ of error to the Circuit Court, returnable on the first Monday of November, 1868.

A writ of error was issued by the clerk of the Circuit Court, the original of which is in the transcript, p. 53. It is returnable on "*the first Monday of December next.*"

The citation requires Semmes to appear before the Circuit Court, "at its next term," to answer the writ of error taken by the United States, p. 53. No day is mentioned in the citation, and as the next term included the period from November until the following April, it is presumed the citation was to appear at the next term on the first Monday in December, the day specified in the writ of error. The terms of the Circuit Court in Louisiana commence on the first Monday of November and fourth Monday of April.

On the 28th of May, 1869, Semmes moved the Circuit Court to dismiss the writ of error, among other reasons :

1. Because the writ of error was made returnable on the first Monday of December instead of the first Monday of November.

2. That the writ of error was not returnable according to the citation, nor the citation according to the writ of error.

3. Because the President, by his proclamation of the 25th of December, 1868, had dismissed all proceedings against any person or his property engaged or in any manner implicated in the rebellion.

4. The writ of error was not returnable in accordance with the order allowing the same, to wit, the first Monday of November, pp. 54 and 55.

The cause was submitted to the Circuit Court on the 6th of June, 1870, it was not decided until the 20th of June, 1872, p. 56.

On that day the decree of the District Court was reversed, and the decree originally pronounced by that Court was decreed to stand and remain in full force, "and *that the sale made by virtue thereof do stand confirmed*," p. 57.

The Circuit Court not content with reversing the decree of the District Court, which ordered restoration of the property libelled, and not content with

confirming the original decree of condemnation, proceeded a step further, and confirmed what had been done under the decree to wit, the sale made to Burbank.

This part of the decree clearly was in the interest of Burbank, the purchaser, who was no party to the writ of error, and who, by failing to take a writ of error, had acquiesced in the decree against him.

Our contention is:

1st. That the original decree having been opened, the property of Semmes could not be sold at all, as there was no subsisting decree of condemnation.

2d. The sale to Burbank was null because the venditioni exponas required the Marshal to sell on the 18th of May, whereas he declined to sell on that day, and of his own accord appointed another day, to wit, 13th of June, 1865.

3d. The writ of error should have been dismissed because it was returnable on the first Monday of December, instead of the first Monday of November, and did not conform to the order allowing it or to the citation.

4th. That all the parties to the proceedings and decree of the District Court were not made parties to the writ of error to the Circuit Court.

5. That the Circuit Court had no authority to render a decree confirming the sale to Burbank.

6. That the special pardon, as well as the amnesty proclamations of Sept. 7, 1867, and Dec. 25, 1868, entitle the plaintiff in error to a restoration of his property, in case the sale by the Marshal in June, 1865, is null and void.

FIRST POINT.

The opening of the original decree of condemnation by consent, is equivalent to a new trial. A rule for a new trial, if granted as to one isssue, reopens the whole record.

7 Mu. and W., 570; 13 id., 811.

10 Bingham, 331.

The proceedings are penal in their nature, if not criminal proceedings, and therefore the practice in criminal cases should be applied to them. 9 Peters, 682. It is true, the purpose for which the decree was reöpened is indicated in the agreement as well as the order; still the decree itself was open, and Bloom might have claimed the whole as well as a part of the property condemned. If the decree was open for any purpose, the case was still on trial, as if no decree had been made.

SECOND POINT.

The sale to Burbank was null; the venditioni exponas required and directed the Marshal to sell the property on a specified day, to wit: 18th May, 1865. On that day he withdrew the property, because no bidder offered two-thirds of the appraised value.

This was not a sale under execution, to be conducted in accordance with the provisions of the State law. But in advertising the property for sale the second time, even the State law was disregarded. That law required the second offering to be made on twelve months credit, after fifteen days advertisement. Code Practice, art. 680. The second sale was made for one-half the price cash, and the residue on tweve months credit, after an advertisement of only ten days. Marshal's Return, p. 22.

The recitals in the Marshal's deed would induce the belief, that there had been but one offering after thirty days advertisement, and that such offering was made on the day of sale, to wit: 13th June, 1865. The deed recites that the Marshal exposed the property for sale "after giving thirty days "notice of said sale in the True Delta, &c., on 13th "and 26th April, 18th and 31st May, and 13th June, "1865."—p. 44.

Whereas the return shows, that the property was offered on the 18th May, the day fixed in the venditioni exponas, and being withdrawn, was reöffered on 13th June, and sold. This sale on 13th June was only advertised two days, to wit: on 31st May and on the day of sale; whereas the venditioni exponas requires the sale to be made, "first giving ten days notice at least," etc.

THIRD POINT.

The writ of error should have been dismissed by the Circuit Court, because it was returnable on the *first Monday of December*, instead of the first Monday of November.

This writ of error was sued out on the 9th of July, 1868—p. 53. The motion to dismiss was filed 28th of May, 1869, and submitted on the 6th of June, 1870, two years previous to the practice act of 1872. No application at any time was made to amend the writ of error. It is true the third section of the practice act of 1872, authorizes the Supreme Court, as well as the Circuit Court, to allow an amendment of a writ of error on terms; but the power of the Court must be invoked, and set in motion, by an application or motion to amend, as was done in Hampton vs. Rouse, 15 Wallace, p. 685.

But the Practice act cannot be applied to a cause submitted two years previous to its passage, especially where there is no application to allow an amendment of the writ of error.

The authorities are abundant to establish the validity of the motion to dismiss, because the return day specified in the writ of error was not the day fixed by law for the commencement of the term of the appellate court.

Agricultural Company vs. Pierce, 6 Wallace, 246.
Carroll vs. Dorsey, 20 Howard, 204.

Insurance Company vs. Mordecai, 21 Howard 195.

Porter vs. Foley, 21 Howard, 393.

It is true, the citation may be referred to for the purpose of correcting a mere clerical error, as was done in McVeigh vs. United States, 8 Wallace, 640. In that case the writ was returnable on the third Monday of December *next*, and it should have been "instant." The citation was to appear the third Monday of December "instant." The word "next" in the writ, was corrected by the word "instant" in the citation, especially as the citation summoned the appellee to appear in the Supreme Court "*pursuant to a writ of error*," filed in the Clerk's office.

In that case also, the citation specified the *third Monday of December* as the day on which the party was notified to appear.

In this case, the writ of error is returnable on the first *Monday of December next;* the citation does not express any particular day on which the party is to appear; and therefore the day of appearance "at the next term" must be construed to be the third Monday of December; nor does the citation summon the appellee to appear, "*pursuant to a writ of error filed* in the Clerk's office," but "merely to "answer a writ of error taken by the United States "in this cause."

FOURTH AND FIFTH POINTS.

That all the parties to the decree of the District

Court, were not parties to the writ of error, and therefore the Circuit Court had no authority to *confirm the sale to Burbank.*

Two questions were involved in the proceedings in the District Court, and were settled by the decree directing the property libelled to be restored to Semmes. The first question was, whether or not, at the time of sale to Burbank, there was a subsisting decree of condemnation; the solution of the second determined the validity or invalidity of the sale asserted by Burbank. The United States and Burbank were jointly interested in the solution of these questions; if there was no decree of condemnation, Burbank was entitled to be reimbursed the price paid by him; if there were no valid sale his claim for reimbursement was equally valid.

The decree of the District Court was rendered contradictorily with the United States and Burbank, and both of them were ordered to restore the property to Semmes.

Burbank never applied for a writ of error to reverse this decree, which has now become final as to him, by the lapse of time. The decree for restoration was signed 2d July, 1868—p. 51.

As against Burbank, the decree is now a finality. Was it competent for the Circuit Court to reverse that portion of the decree applicable to Burbank,

when Burbank was not a party to the writ of error? The decree of the Circuit Court, that the sale made by virtue of the original condemnation do stand confirmed, is equivalent to reversing the decree of the District Court, ordering Burbank to restore the property to Semmes.

The decree rendered by the Distri t Court was, in effect, a joint decree against the United States and Burbank, whereby the sale to Burbank under the decree was annulled. If this be so, it is clear that the Circuit Court was without jurisdiction on the several writ of error of the United States to reverse the decree of the District Court.

Williams vs. Bk. U. S., 11 Wheat., 114.
Owings vs. Kincannon, 7 Pet., 401.
Thomas vs. Lane, J. Sumner, p. 11.
Messina vs. Carozos, 20 How., 289.

SIXTH POINT.

The special pardon as well as the amnesty proclamations of 7th Sept., 1867, and Dec., 1868, entitle the plaintiff to restoration of his property.

If the sale under the venditioni exponas was void, then Semmes is not claiming property sold under a decree of Court, in violation of the condition contained in his special pardon. The amnesty proclamations of 1867 and 1868 contain no such condition.

The effect of the pardon and amnesty was to blot out the offence of Semmes, just as if it had never existed.

Ex parte Garland, 4 Wallace, 333.
Carlisle vs. U. S., 16 Wallace, 151.
Padelford's Case, 9 Wallace, 531.

If, as is contended, there was no legal sale of the property by the Marshal; it is clear the rights acquired by the United States under the decree were extinguished by the special pardon and the amnesty proclamations of 1867 and 1868, and therefore Semmes is entitled to the property.

Klein's Case, 13 Wallace, 125.

Respectfully submitted,

THOMAS J. SEMMES,
in propria persona.
ROBT. MOTT.
of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

THOMAS J. SEMMES, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES.
} No. 237.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1874.

THOMAS J. SEMMES, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES. } No. 237.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

Brief for the United States.

I.

The first assignment of error relied upon is that, the original decree having been opened, the property of Semmes could not be sold at all, because there was no subsisting decree of condemnation.

The decree (or, more properly speaking, judgment) of condemnation was only set aside in part. It stood in full force as against Semmes at the time his default was taken off and he was allowed to appear. It is hardly necessary to argue that a judgment or decree may be set aside in part and ordered to stand as to the residue. Where it is divisible, vacating it in part can in no wise affect the validity of what is not set aside. At common law it is every-day practice to grant a new trial on part

of the record, or a portion of the issues involved in a case, and not as to the rest.

Tidd Pract., (9th ed.,) 911.

In the present case the judgment was opened for the purpose of submitting the claim of Isaac Bloom, and for none other. (Rec., p. 34.) This did not justify the district court in allowing Semmes's default to be taken off; and its action thereon, being irregular and erroneous, was properly reversed on writ of error.

II.

The second assignment of error is that the sale to Burbank was null and void, because the marshal sold the property on the 13th of June; whereas the *venditioni exponas* required him to sell it on the 18th of May.

It appears by the marshal's return that, there being no sufficient bid on the 18th of May, he adjourned the sale until the 13th of June, giving the ten days' notice, as required by the *venditioni exponas*. It would seem as if the subsequent decree of distribution of the proceeds of the sale, which expressly refers to the marshal's return, (Rec., p. 35,) was a confirmation of the sale, and remedied any formal defect therein. This confirmation was made after the judgment had been so far set aside as to allow Isaac Bloom to put in a claim to a portion of the libeled property. It was not till nearly three years after that Burbank, the purchaser at the sale, was summoned in. There was no formal order vacating the judgment of condemnation as to Semmes or avoiding the sale; but Semmes's default was taken off, the libel dismissed, and a decree of restitution awarded. (Rec., p. 51.) The judgment of the circuit court, under these circumstances, in affirming the sale, was correct.

III.

The third assignment of error is that the writ of error to the circuit court should have been dismissed, because it was returnable on the first Monday of December, instead of the first Monday of November.

The writ was returned at the proper time. The error was merely clerical, and was amendable.

Hampton *v.* Rouse, 15 Wall., 685.

IV, V.

The fourth and fifth assignments of error, that Burbank was not a party to the writ of error in the circuit court, and that therefore that court had not jurisdiction to confirm the sale to him, are untenable. The United States were the libellants of the property, and on a decree or judgment in the district court, dismissing the libel and ordering restitution of the property, they could themselves bring a writ of error to the circuit court and there have the entire judgment below re-examined. Whether Burbank was regularly made a party to the proceedings may be doubtful; but it certainly was not necessary or regular that he should join the Government in a writ of error.

This point does neither seem to have been taken below.

VI.

The last assignment of error is that the plaintiff in error's pardon and the proclamations of amnesty of September, 1867, and December, 1868, restored his property to him.

The property had been long before condemned, and

the judgment of condemnation as against Semmes has never been regularly set aside. The special pardon to Semmes was conditional, and excepted rights to property sold under the confiscation laws. (Rec., p. 49.) This condition was legal and binding.

Ex-parte Wells, 18 How., 307; S. C., 1 Miller, 260.

The amnesty proclamation of September, 1867, was not pleaded in the district court, and the proclamation of December, 1868, was not issued until after the writ of error to the circuit court was sued out; and the question of the effect of neither of them was raised in the circuit court. It is difficult to see how they can now be pleaded, when the only questions before the court are those presented by the records in the courts below.

But, in addition to this, the proceedings under the confiscation act was the exercise of belligerent rights against a public enemy, and not a punishment for treason.

Miller *v.* United States, 11 Wall., 268.

Confiscation, therefore, being a proceeding distinct and independent of the treasonable guilt or innocence of the owner of the goods or lands confiscated, pardon for treason cannot restore rights to property seized and condemned in exercise of the sovereign's belligerent rights. (See Gay's Gold, 13 Wall., 358.)

S. F. PHILLIPS,
Solicitor-General.

C. H. HILL,
Assistant Attorney-General.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THOMAS J. SEMMES, *Plaintiff in Error*,
vs.
THE UNITED STATES.
} No. 27.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THOMAS J. SEMMES, *Plaintiff in Error*,
vs.
THE UNITED STATES. } No. 27.

In Error to the Circuit Court of the United States for the District of Louisiana.

BRIEF FOR THE UNITED STATES.

I.

The first assignment of error relied upon is, that, the original decree having been opened, the property of Semmes could not be sold at all, because there was no longer any subsisting decree of condemnation.

The judgment first entered was not reversed, revoked, nor annulled; it was merely modified so as to change the disposition of a single parcel, and left in full force as to the rest. The substance of the order is that the decree is opened only so far as to admit the claim of Isaac Bloom to one lot. (Record, p. 34.) A court has power, at any time during the term, (but not afterward,) to amend or correct its judgment. The only object in doing so must be to make it embrace more or less, in amount or quantity, than it did as originally entered.

It is set aside in part and stands as to the residue. Where it is divisible, vacating a part cannot affect the validity of what is not set aside. In the course of common-law procedure, it is not infrequently the case that new trials are granted as to a part of the record and not as to the rest. (Tidd's Practice, ninth ed., 911.)

After the establishing of the facts, by confession through default and by witnesses, and the procedure to sell, the formal making up of the decree is of little consequence, provided the whole record shows the conclusion and determination reached. Reopening the decree, so far as to admit Mr. Bloom's claim to a single lot, could have no effect upon Semmes, who had been defaulted, and had no standing in court. This was not a common-law trial. It was a special proceeding against several lots of land; one parcel was found not liable to forfeiture and the others were condemned. Nothing could be more clearly proper than this course. The several parcels were separately described. All persons interested, in any wise, in either of them, were notified to intervene.

Whoever chose could appear to vindicate such interest as he claimed in the premises, or any part of them, and would then become, *pro tanto*, a party to the litigation. But when his particular claim had been determined, favorably or adversely, the subsequent proceedings, relating to other parcels or interests, could concern him no more; nor ought he to be allowed (if he desired) to protract the litigation, or to appear in it further, after his own interests had been concluded by a final determination upon them. The cases cited by the plaintiff in error do not support the position taken. In

the first, Earl of Macclesfield *vs.* Bradley, 7 Mees. & Wels., 570, the whole opinion is in these four lines: "Per curiam. Where a cause is sent down for a new trial, *ex debito justitiæ*, and not by the discretion of the court, it is open on the whole record. This case falls, therefore, within the general rule on the subject, and the rule must be made absolute on payment of costs."

Price *vs.* Harris, 10 Bing., 331, cited by the plaintiff, militates against him. There, seventeen persons were sued: a *nol. pros.* was entered as to one, a verdict rendered against another, and in favor of the other fifteen; the court set aside this verdict as to one of these fifteen, and let it stand as to the rest.

The proceedings in this case are no more penal than they must necessarily be in cases of forfeiture, which are always grounded upon some dereliction or omisson of duty on the part of the owner or possessor of the property libelled.

It is not to be treated as a criminal prosecution.

The Confiscation Cases, 20 Wallace, 92.

Though the *ground* of condemnation was the alleged hostility of Mr. Semmes to the Government; and the *effect* of it to deprive him, during life, of the land; yet the *purpose* of this special proceeding was simply to obtain an adjudication upon the real estate libelled, to determine its *status*; affecting persons only incidentally, through their relations to the land.

II.

As to the sale of the land:

The only person originally mentioned or summoned by name was Mr. Semmes, the present appellant.

Upon the 8th day of September, 1863, he was defaulted, thereby confessing the truth of the charges in the libel. (Record, p. 8.)

April 5, 1865, the land was "condemned as forfeited to the United States." (Record, p. 21.)

By this judgment, order, and decree, it thereupon became "the property of the United States." (See 12 U. S. Stats. at Large, 591, § 7.)

What was thereafterwards done with it might be of consequence to the United States, to whom it belonged, but could not concern Mr. Semmes, who had lost it. The *status* of this libelled property was fixed by this adjudication; and no subsequent action (or errors) in the disposition of it could change its condition. By this judgment the title was devested from the late owner, and vested in the United States; so that it could no longer concern him whether the sale by the marshal was regular and formally correct or not.

This sale was not (like a tax sale) one of an individual's property, to enforce payment of a debt or duty, or compliance with some order of court, the balance, if any, going to the original owner, and he having, therefore, the right to scrutinize the mode of sale, because interested in, and entitled to, a share of the proceeds. The original proceedings against the land were *in invitum*, and to be strictly according to the statute authorizing them; but, after they had culminated in a decree of condemnation, the sale was *not in invitum*. It was a sale of "the property of the United States," by its officer, under a decree of its court. Whether regular or irregular is something that concerns no individual citizen, but can be inquired into only by the Government itself; certainly not by one

who, having been cited to appear, has, by his default, declined to contest the subject-matter of the libel.

Independently of the provision of the eighth section of the confiscation act of 1862, giving the district court power to direct the mode of sale, this court has said that where property is brought by seizure before a tribunal "it is the duty of that court to correct any misconduct or mistake on the part of the sheriff in conducting the sale, * * * had complaint been made in time and proper form." (Ingraham *vs.* Dawson, 20 Howard, 496.).

True, "this was not a sale under execution to be conducted under State law." Upon execution the *debtor's* land is sold or taken by levy, and remains his until so sold or taken, with, generally, a subsequent right of redemption. Here, the sale was by the United States, through its officer, of its own property. By the confiscation act, the court had power to supervise the time, place, and mode of sale, and acquiesced in those adopted. The Attorney General, by instructions given January 8, 1863, had directed the seizures to be made in conformity with the State laws, "as nearly as may be, consistently with the objects of the acts of Congress." (Miller *vs.* U. S., 11 Wallace, 274.) The marshal endeavored to pursue the course indicated by the State laws in making this sale. He had a right to adjourn. Bloform v. R.R., 3 Wall. 196.

The subsequent decree for the distribution of the proceeds of the sale, (Record, pp. 35, 36,) expressly referring to the marshal's return of his doings, was a confirmation of the sale, and remedied any formal defects.

It was a sale of "the property of the United States." If the vendor and purchaser acquiesce in it, and the

consideration is paid and received, no third person (even if he did once have an interest in the property—which he afterwards lost, and it vested in the United States) can have any right to attack or impeach the sale.

III.

The mistake in the writ of error by the insertion of the word "December" instead of "November" was amendable, and therefore will be considered as waived and disregarded at this stage of the case.

Hampton *vs.* Rouse, 15 Wallace, 685.

It can be corrected by the citation. (McVeigh *vs.* United States, 8 Wallace, 640.) That bears date July 9, 1868. The time of holding the then next term of the court was made certain by law. (10 U. S. Stats. at Large, 307.) It was only while such error of return day was not amendable that it was held not waived by appearance. The act of June 1, 1872, authorizing such amendment must, from its terms and nature, be held to apply to causes then pending.

IV AND V.

This point, as to parties, does not seem to have been taken in the court below.

If the action of the district court was of such a nature as to require or authorize any further proceedings, the writ of error was properly in the name of the United States, the libellant instituting the original proceedings by which the court obtained jurisdiction over this subject-matter. Upon a decree ordering the restitution of property once adjudged to be that of the

United States, they could bring a writ of error and and have that decision re-examined.

Burbank was improperly made a party to the proceedings in the court below, and certainly it was neither necessary nor regular that he should join the Government in the writ of error.

After the decree of condemnation was entered, this libel and proceedings under it were *functus officio*—the power of the district court in the premises was exhausted—*so far as the land itself was concerned*—except that the act provides that it "may be disposed of as the court may decree."

It may be (and probably is) true that the district judge, between the time of forfeiture decreed and sale ordered and the day of sale, might so far modify his order as to the disposition of a lot as to direct the marshal not to sell it, and (perhaps) to ultimately decree its restoration to a claimant whom he has allowed to appear; but, certainly, after the sale was *actually completed, then* the power of the district court, *as to the land*, was exhausted; and only the proceeds of its sale remained to be acted upon and distributed.

The statute provides (§ 8, Statutes at Large, vol. 12, page 591) for such decree, sale, and deeds, as shall "vest in the purchasers of such property good and valid titles thereto."

By the decree of condemnation this land became "the property of the United States."

By the sale and deed to Burbank it became *his* property; of which he could not be deprived by any subsequent action on the part of the court that ordered the sale.

It would seem that Mr. Burbank is a citizen and resident of New Orleans, doing business at No. 21 Tchoupitoulas street. For nearly three years he had been the recorded owner of that land, under the deed of June 15, 1865, to him, when it was claimed by Thomas J. Semmes, also a citizen of New Orleans. The United States had no title, having transferred it for value to Mr. Burbank. It was a controversy, then, between two citizens of Louisiana, relating to the title to land in that State. By what right could the district court claim to take jurisdiction of it, or to award the land to *either* claimant?

The fact that Mr. Burbank's title accrued through a sale ordered by that court can make no difference. In some (if not all) of the New England States the defendant's land is attached upon the original writ to respond to the final judgment; and, if this be in favor of the plaintiff, the land itself is taken, at an appraisal, upon the execution; but the regularity of the levy can only be determined in a new action brought for the purpose, and cannot be inquired into as part of the proceedings in the original suit. *A fortiori* should this be the case where (as here) the person claiming title was not party to the original litigation. Judicial sales will be thinly attended and the bids small, if it can be held that the validity of them is at all dependant upon subsequent proceedings in the cause, or (especially) upon a rehearing of the parties thereto.

If, for any reason, Mr. Semmes never lost his land, the action of the district court (in assuming to restore it) was supererogatory; if he did lose it by the decree, and it passed to Mr. Burbank by the sale, then the action of the court was *coram non judice* and nugatory—for, if

Mr. Semmes had no title and Mr. Burbank had one, how could the district judge take it from the latter and give it to the former?

This land had become Mr. Burbank's. He could be deprived of it only by "due process of law," which Lord Coke declares to be the customary process; that by which suits are ordinarily commenced. (2 Co. Inst., 50.) It should be by such process as was then in use in Lousiana for the purpose of determining title to lands in that State, claimed by different persons. Regardless of its *origin*, Mr. Burbank was entitled to have his title tried just as any other citizen's title to land there would then have been tried—by direct process against himself or the land.

There was no authority under the act approved July 17, 1862, to seize Mr. Burbank's land and decree that he had forfeited it, unless it were alleged and made to appear that he was one of the persons mentioned in the fifth and sixth sections of that act, or had done some of the acts there specified. Yet the course pursued, if effective at all, amounts to the seizure and forfeiture of the estate of one accused of no offence whatever, upon a process called a "notice," which professed to make him a party to the proceedings, and liable to lose his estate, not by reason of any non-feasance or misfeasance of his own, but solely as the judge might determine upon the re-examination of facts once passed upon, and the acts of others done after his title had accrued!

It was only upon the theory that he *had* acquired title, and that he could thus be deprived of it, that he was cited in at all.

If, then, the court had not jurisdiction of the *subject-*

matter, the fact that Mr. Burbank (after excepting to the process) put in his deed cannot give it jurisdiction. It is only where the *subject* is one within the province of the court that an appearance will give jurisdiction over the persons of the litigants.

Gilliland *vs.* Sellers, 2 Ohio St., 223.
Morse *vs.* Presby, 5 Foster, 299.
State *vs.* Richmond, 6 Foster, 239.
Mercier *vs.* Chase, 9 Allen, 242.

Hence, Mr. Burbank was properly omitted from the writ of error by which the cause was taken from the district to the circuit court. Indeed, so evidently was the action of the district court unauthorized, and so plainly does its want of authority (to reopen the adjudication of condemnation) appear upon the record, that it would have been ineffectual even had no steps been taken to reverse it. It was *void*, not voidable. The power to review an action of this nature does not exist in that court. It was a statutory proceeding. When completed, it was as binding upon that court and its judge as upon any other tribunal in the land.

Yet, though the district court had no jurisdiction to restore the land to Mr. Semmes, it was proper for the circuit court to reverse the decree, and affirm Mr. Burbank's title, instead of merely dismissing the suit.

U. S. *vs.* Huckabee, 16 Wallace, 414.

VI.

The position of Mr. Semmes as to the meaning of the condition attached to the pardon granted to, and accepted by him, cannot be correct.

Its purpose was to protect purchasers under the confiscation act. It must, therefore, be held to apply to

all sales made under color of Federal authority; otherwise it is entirely ineffectual as a protection to vendees against expensive litigation. It is absurd to say that it applies only to *valid* sales; for this makes the condition nugatory and *felo de se.* How is the question of validity or invalidity to be determined except by the result of litigation? And if the final issue shows the sale to have been valid, then the condition is violated by contesting it. But the very thing that it was promised should not be done, has then been done, *i. e.*, land found to have been actually and properly sold by the United States, has been claimed by one who obtained his pardon upon the express condition that he would make no such claim!

Again, a perfected sale, in which no flaw can be made to appear, did not need this protection. It was to protect sales made by the United States, where slight technical defects might possibly be found, that this condition was inserted in the pardon: that those who, during the war, had paid to the United States a valuable consideration for a title to property should not lose it, or be exposed to litigation concerning it through the clemency of the Government towards those who had forfeited the estates by their acts of opposition to Federal authority.

The condition in the pardon, being accepted, was legal and binding.

Ex parte Wells, 18 Howard, 307.

The amnesty proclamation of 1867 was not pleaded in the district court; and the proclamation of 1868 was not issued till after the writ of error to the circuit court was sued out; and the question of the effect of neither of them was raised in the circuit court. How

can they now be pleaded, when the sole questions are those presented by the records in the court below?

But the proceedings under the confiscation act were in exercise of belligerent rights against a public enemy, and not a punishment for treason.

Miller *vs.* United States, 11 Wallace, 268.

The Confiscation Cases, 20 Wallace, 92.

Confiscation, therefore, being a proceeding distinct from, and independent of, the treasonable guilt or innocence of the owner of the property confiscated, pardon for treason cannot restore rights to property seized, condemned, and sold in the exercise of the sovereign's belligerent rights—especially as against one who has bought in good faith and for full value.

Gay's Gold, 13 Wallace, 358.

By the seizure of the property, the district court acquired jurisdiction to condemn it. To the time of sale no exception is taken to the exercise of this jurisdiction. Its proceedings prior to and in the sale "should not be subjected to so strict a construction as to defeat the execution of the laws and render them a nullity."

Tyler *vs.* Defrees, 11 Wallace, 331.

But its assumption of power to restore the land, three years after its sale, was unauthorized, and its decree to that effect was properly reversed. A decree or judgment may be held good in part and bad in part—good to the extent it is authorized by law, and bad as to the residue.

Bigelow *vs.* Forrest, 9 Wallace, 339.
Day *vs.* Micon, 18 Wallace, 156.
Ex parte Lange, *ib.*, 163.

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